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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1866.

No. 529. 210.

S. H. WILLIAMS, TREASURER OF THE TOWN OF GLASTONBURY, HARTFORD COUNTY, STATE OF CONNECTICUT,
PLAINTIFF IN ERROR.

v.

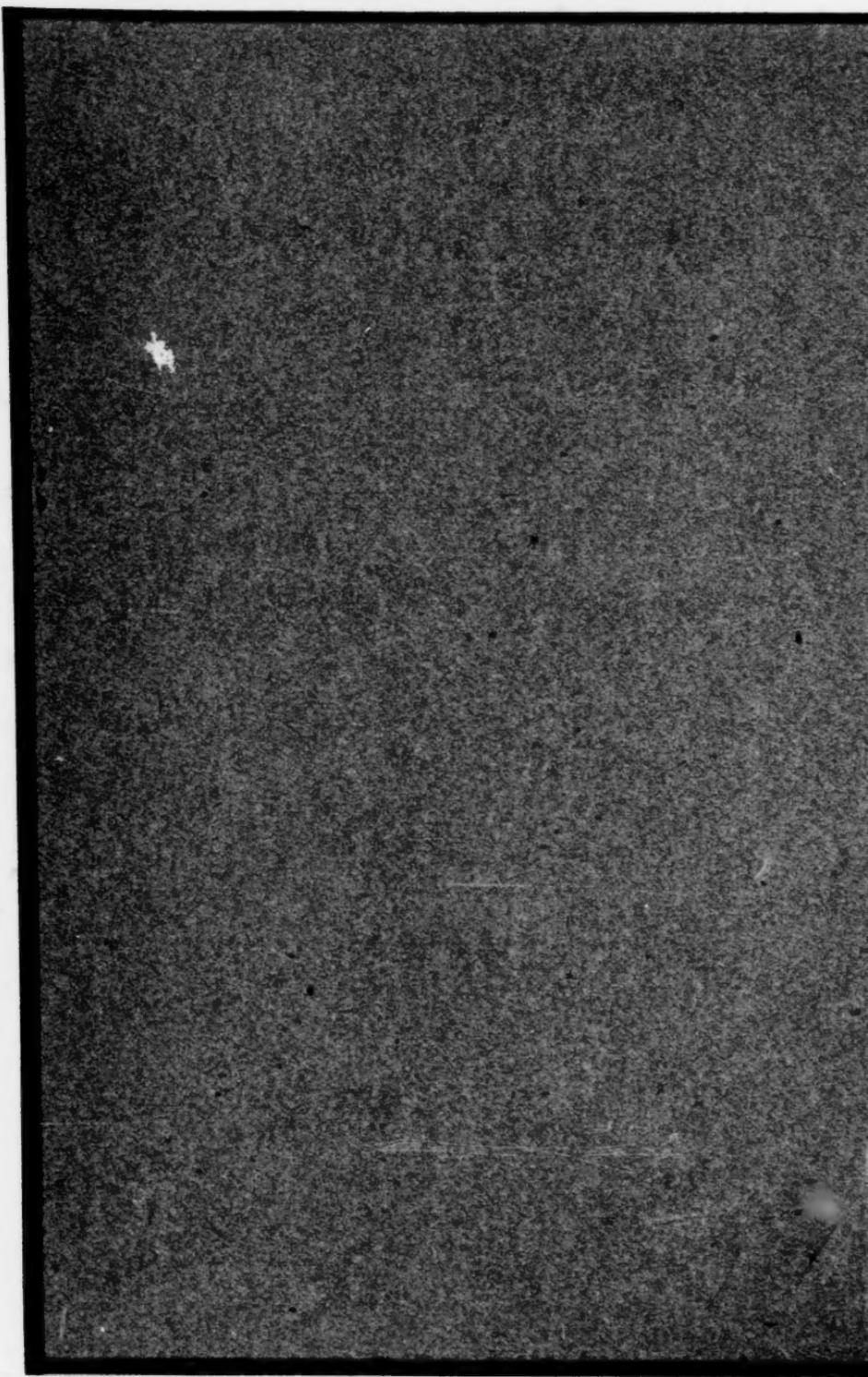
ARTHUR F. EGGLESTON, ATTORNEY FOR THE STATE OF
CONNECTICUT.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF
CONNECTICUT.

FILED JULY 26, 1866.

(16,849.)

529



(16,349.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 570.

S. H. WILLIAMS, TREASURER OF THE TOWN OF GLASTONBURY, HARTFORD COUNTY, STATE OF CONNECTICUT,
PLAINTIFF IN ERROR,

vs.

ARTHUR F. EGGLESTON, ATTORNEY FOR THE STATE OF
CONNECTICUT.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF
CONNECTICUT.

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1a THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of errors of the State of Connecticut,
Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of errors of the State of Connecticut, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit bewteen Arthur F. Eggleston of Hartford, Connecticut, attorney for the State of Connecticut, vs. S. H. Williams, treasurer of the town of Glastonbury, Hartford county, State of Connecticut, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or the laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty, or statute of or commission, held under the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claim- under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said S. H. Williams, treasurer of the said town of Glastonbury, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and

2a speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same at Washington on the 12th day of August, 1896, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 16th day of July, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal of Circuit Court, Connecticut.]

E. E. MARVIN,

*Clerk of the Circuit Court of the United States
for the District of Connecticut.*

Allowed and ordered to be a supersedeas and that there be a stay

of execution, and of all proceedings in said case pending the foregoing writ of error, by—

CHARLES B. ANDREWS,
*Chief Justice of the Supreme Court of Errors
of the State of Connecticut.*

3a Supreme Court of the United States.

S. H. WILLIAMS, Treasurer of the Town of Glastonbury, State of Connecticut, Plaintiff in Error,

vs.

ARTHUR F. EGGLESTON, of Hartford, Connecticut, Attorney for the State of Connecticut, Defendant in Error.

Know all men by these presents that we, S. H. Williams, of the town of Glastonbury, county of Hartford, and State of Connecticut, as principal and Thomas H. L. Tallcott, Hector Chapman, and Alpheus D. Clark, all of said town as sureties, are held and firmly bound unto the defendant, Arthur F. Eggleston, attorney for the State of Connecticut, defendant in error in the above-entitled action, in the sum of \$500 to be paid to the said Arthur F. Eggleston, attorney as aforesaid, his executors, administrators, or successors. To the which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally and our, and each of our heirs, executors, and administrators firmly by these presents.

Whereas the above-named S. H. Williams, treasurer of the town of Glastonbury, Connecticut, has sued out, and presented a writ of error to the Supreme Court of the United States, to reverse the judgment and decree rendered in the above-entitled cause by the supreme court of errors of the State of Connecticut, for the first judicial district:

4a Now therefore the condition of this obligation is such that if the said S. H. Williams, treasurer of the town of Glastonbury, Connecticut, shall prosecute his writ of error to effect and answer all damages and costs if he fail to make good his plea, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

In witness whereof we have hereunto set our hands and seals this 16th day of July, A. D. 1896.

S. H. WILLIAMS.	[L. S.]
THOMAS H. C. TALLCOTT.	[L. S.]
HECTOR CHAPMAN.	[L. S.]
ALPHEUS D. CLARK.	[L. S.]

The foregoing bond is hereby approved.

CHARLES B. ANDREWS,
*Chief Justice of the Supreme Court of Errors
of the State of Connecticut.*

STATE OF CONNECTICUT,
First Judicial District. }

CLERK'S OFFICE, SUPREME COURT OF ERRORS.

A duplicate of the foregoing bond is on file in this office.
Hartford, Conn., July 24th, 1896.

C. W. JOHNSON,
Clerk of the Supreme Court of Errors.

5a UNITED STATES OF AMERICA, ^{ss}:

To Arthur F. Eggleston, of the town and county of Hartford and State of Connecticut, attorney for the said State of Connecticut, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the 12th day of July, 1896, pursuant to a writ of error filed in the clerk's office of the supreme court of errors of the State of Connecticut, wherein S. H. Williams, treasurer of the town of Glastonbury, Connecticut, is plaintiff in error, and you as such attorney are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff as in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 16th day of July, in the year of our Lord one thousand eight hundred and ninety-six.

CHARLES B. ANDREWS,
*Chief Justice of the Supreme Court of Errors
of the State of Connecticut.*

I hereby this 17th day of July, A. D. 1896, accept due personal service of the foregoing citation, waiving notice.

ARTHUR F. EGGLESTON,
Attorney for the State of Connecticut.

6a To all to whom these presents shall come, Greeting:

Know ye that I, Charles W. Johnson, clerk of the supreme court of errors of the State of Connecticut, first judicial district, in and for the county of Hartford, in said State, having inspected the files and records in said court in my custody, do find their remaining on file a certain record in a cause wherein Arthur F. Eggleston, of Hartford, in said State, attorney for the State of Connecticut, at the relation of Morgan G. Bulkeley, Meigs H. Whaples, John G. Root, John H. Hall of said Hartford, James W. Cheney of Manchester, in said State, Alembert O. Crosby of Glastonbury, in said State, Charles W. Roberts of East Hartford, in said State, and Lewis Sperry of South Windsor, in said State, commissioners for the Connecticut River bridge & highway district, was plaintiff and S. H. Williams treasurer of said town of Glastonbury in said Hartford

county, State of Connecticut, was defendant, in the words and figures following, to wit:

[Seal Supreme Court of Errors, Con.]

CHARLES W. JOHNSON,
*Clerk of the Supreme Court of Errors for
the First Judicial District, County of
Hartford, State of Connecticut.*

1 Superior Court, Hartford County, October 16, 1895.

STATE *ex Rel.* MORGAN G. BULKELEY *et al.*, Commissioners for the
Connecticut River Bridge and Highway District,

{
vs.

S. H. WILLIAMS, Treasurer of the Town of Glastonbury.

Motion for Writ of Mandamus.

To the honorable superior court, now in session at Hartford, within and for the county of Hartford, comes Arthur F. Eggleston, State's attorney for the county of Hartford and State of Connecticut, at the relation of Morgan G. Bulkeley, Meigs H. Whaples, John G. Root, John H. Hall of Hartford, James W. Cheney of Manchester, Alembert O. Crosby of Glastonbury, Charles W. Roberts of East Hartford, and Lewis Sperry of South Windsor, as they are the commissioners for the Connecticut River bridge and highway district, and shows to the court:

1. That the said Morgan G. Bulkeley, Meigs H. Whaples, John G. Root, John H. Hall, James W. Cheney, Alembert O. Crosby, and Lewis Sperry, are and have been since the 28th day of June, 1895, the board of commissioners for the Connecticut River bridge and highway district, appointed and organized as such board pursuant to chapter 343 of the Special Acts of 1895, and that the said Charles W. Roberts was thereafter and prior to the action of said commissioners herein set forth, duly appointed as one of said commissioners, in the place of John A. Stoughton, who resigned and refused to act.

2. Under the provisions of said chapter three hundred and forty-three of the Special Acts of Connecticut, approved June

28, 1895, it became the duty of said commissioners, and they had full authority thereafter to erect new bridges along the highway across the Connecticut river at Hartford, as established and described in a decree of the superior court of Hartford county, passed on the 10th day of June, 1889, which said decree is made a part of this application, and is marked "Exhibit A," to reconstruct, raise and widen the causeway, and approaches appurtenant to and a part of said highway, to provide for the ordinary support and maintenance of said highway, and to do all things necessary for the construction, reconstruction, care, maintenance, and improvement of said highway, and for the ordinary support and maintenance thereof, and to make any and all orders and contracts, and incur expenses to that end as by the provisions of said special act it fully

appears, which said act is made a part of this application, and is marked "Exhibit B."

3. Said highway is a public highway.

4. It was the duty of the town of Glastonbury and its treasurer, on and after June 28, 1895, to obey any and all orders made and passed by the said "the commissioners for the Connecticut River bridge and highway district," pursuant to the provisions of said chapter three hundred and forty-three of the Special Acts of Connecticut, and it was the duty of the treasurer of said town to pay to said commissioners or their treasurer such sums as should be required by said commissioners as its said town's proportion of any and all expense incurred by direction of said commissioners for the ordinary support and maintenance of said highway, whenever the said commissioners should determine with regard thereto, and pass and issue, and present to said treasurer of said town their order therefor, pursuant to the terms and provisions of said special act as set forth in paragraph 2.

5. On and after the 28th day of June, 1895, and prior to the 14th day of September, 1895, the said the commissioners for the Connecticut River bridge and highway district incurred expenses

3 to the amount of five hundred dollars (\$500), for the ordinary support and maintenance of said highway, as authorized and empowered by chapter 343 of said Special Act of 1895, and thereafter said commissioners duly determined by resolution passed on the 14th day of September, 1895, a copy of which is annexed and made a part of this application marked "Exhibit C," the proportion of said expense to be paid by the town of Glastonbury to be the sum of fifteen dollars.

6. On the 14th day of September, 1895, said commissioners by their order duly passed and made on said day pursuant to the authority of said chapter 343, of Special Acts of 1895, ordered and required the said town of Glastonbury to pay by its treasurer to the said the commissioners for the Connecticut River bridge and highway district, or to their treasurer, the said sum of fifteen dollars (\$15), the same being the said proportion payable by the town of Glastonbury as set forth in paragraph 5, which said order, so made and issued by said commissioners, is attached to and made a part of this application, marked "Exhibit D."

7. On the 21st day of September, 1895, said order was duly presented to the town of Glastonbury and to its treasurer by the treasurer of the said the commissioners for the Connecticut River bridge and highway district, being thereunto duly authorized by said commissioners and payment thereof demanded, but the treasurer of said town of Glastonbury refused to pay the same, and still does refuse and decline to pay to said commissioners, or their treasurer, the said sum mentioned in said order, and the same has never been paid.

8. The treasurer of the town of Glastonbury is S. H. Williams.

9. Said attorney moves this court to issue a writ of mandamus, requiring said S. H. Williams as treasurer of the town of Glastonbury to pay to the said the commissioners for the Connecticut River

bridge and highway district the sum of fifteen dollars, and in all respects to obey the said order of said commissioners, and conform to the laws of this State with regard thereto, or to signify cause to the contrary therefor to this court, to be holden at Hartford within and for the county of Hartford, on the first Tuesday of November, 1895.

Dated at Hartford this 16th day of October, 1895.

ARTHUR F. EGGLESTON,
State's Attorney for Hartford County.

STATE OF CONNECTICUT, }
County of Hartford, } ss:

HARTFORD, October 16, 1895.

Personally appeared, Lewis Sperry, and made solemn oath to the truth of the allegations in the foregoing application and motion for a writ of mandamus to the best of his knowledge and belief, before me,

GEORGE P. MCLEAN,
Commissioner of the Superior Court.

Alternative Writ of Mandamus.

Hartford County Superior Court, October Term, 1895.

To wit, this 16th day of October, 1895.

To S. H. Williams, treasurer of the town of Glastonbury, Greeting:

1. Whereas, the said Morgan G. Bulkeley, Meigs H. Whaples, John G. Root, John H. Hall of Hartford, James W. Cheney of Manchester, Alembert O. Crosby of Glastonbury, Charles W. Roberts of East Hartford, and Lewis Sperry of South Windsor, are and have been since the 28th day of June, 1895, the board of commissioners for the Connecticut River bridge and highway district, appointed and organized as such board pursuant to chapter 343, of the Special Acts of 1895, and the said Charles W. Roberts was thereafter and prior to the action of said commissioners appointed as one of said commissioners in the place of John A. Stoughton, who resigned and refused to act.

5 2. And, whereas, under the provisions of said chapter 343 of the Special Acts of Connecticut, approved June 28, 1895, it became the duty of said commissioners, and they had full authority thereafter to erect new bridges along the highway across the Connecticut river at Hartford, as established and described in a decree of the superior court for Hartford county, passed on the 10th day of June, 1889, which said decree is made a part of the foregoing application and is marked "Exhibit A," to reconstruct, raise, and widen the causeway, and approaches appurtenant to and a part of said highway, to provide for the ordinary support and maintenance of said highway, and to do all things necessary for the construction, reconstruction, care, and maintenance, and improvement of said highway, and for the ordinary support and maintenance

thereof, and to make any and all orders and contracts, and incur expenses to that end as by the provisions of said special act it fully appears, which said act is made a part of the foregoing application, and is marked "Exhibit B."

3. And, whereas, said highway is a public highway.

4. And, whereas, it was the duty of the town of Glastonbury and its treasurer, on and after June 28, 1895, to obey any and all orders made and passed by the said "the commissioners for the Connecticut River bridge and highway district" pursuant to the provisions of said chapter three hundred and forty-three, of the Special Acts of Connecticut, and it was the duty of the treasurer of said town to pay to said commissioners, or their treasurer, such sums as should be required by said commissioners as its said town's proportion of any and all expenses incurred by direction of said commissioners for the ordinary support and maintenance of said highway, whenever the said commissioners should determine with regard thereto, and pass and issue, and present to said treasurer of said town, their order therefor, pursuant to the terms and provisions of said special act as set forth in paragraph 2.

5. And, whereas, on and after the 28th day of June, 1895,
6 and prior to the 14th day of September, 1895, the said the commissioners for the Connecticut River bridge and highway district incurred expenses to the amount of five hundred dollars (\$500), for the ordinary support and maintenance of said highway, as authorized and empowered by chapter 343 of said Special Act of 1895, and thereafter said commissioners duly determined by resolution passed on the 14th day of September, 1895, a copy of which is annexed and made a part of this application marked "Exhibit C," the proportion of said expense to be paid by the town of Glastonbury to be the sum of fifteen dollars.

6. And, whereas, on the 14th day of September, 1895, said commissioners, by their order duly passed and made on said day pursuant to the authority of said chapter 343, of Special Acts of 1895, ordered and required the said town of Glastonbury to pay by its treasurer to the said the commissioners for the Connecticut River bridge and highway district, or to their treasurer, the said sum of fifteen dollars (\$15), the same being the said proportion payable by the town of Glastonbury as set forth in paragraph 5, which said order, so made and issued by said commissioners, is attached to and made a part of this application, marked "Exhibit D."

7. And, whereas, on the 21st day of September, 1895, said order was duly presented to the town of Glastonbury and to its treasurer by the treasurer of the said the commissioners for the Connecticut River bridge and highway district, being thereunto duly authorized by said commissioners, and payment thereof demanded, but the treasurer of said town of Glastonbury refused to pay the same, and still does refuse and decline to pay to said commissioners, or its treasurer, the said sum mentioned in said order, and the same has never been paid.

8. And, whereas, the treasurer of the town of Glastonbury is S. H. Williams.

as by the application on file of Arthur F. Eggleston, State's attorney for Hartford county, made at the relation of the said the
 7 commissioners for the Connecticut River bridge and highway district, it is understood.

Now, therefore, that due and speedy justice may be done in this behalf it is required and enjoined of you, the said S. H. Williams, as treasurer of the town of Glastonbury, that before the first Tuesday of November, 1895, you do pay to the commissioners for the Connecticut River bridge and highway district the sum of fifteen dollars (\$15), as is required by said order of the said the commissioners for the Connecticut River bridge and highway district, and in all respects to obey the order of said commissioners and conform to the laws of this State with regard thereto, or signify cause to the contrary thereof to this court, to be holden at Hartford within and for the county of Hartford, on the first Tuesday of November, 1895, at 10 o'clock in the forenoon.

By order of the court,

GEORGE A. CONANT,
Assistant Clerk.

To the sheriff of the county of Hartford, his deputy, or to any indifferent person, Greeting :

By authority of the State of Connecticut, you are hereby commanded to notify said S. H. Williams, treasurer of the town of Glastonbury, of the pendency of said motion and application for a mandamus, and of the above and foregoing order of alternative mandamus by forthwith leaving with said S. H. Williams, a true and attested copy of said motion for an order of mandamus, and of this order of notice.

Hereof fail not, but due service and return make.

Dated at Hartford this 16th day of October, 1895.

By order of court,

GEORGE A. CONANT,
Assistant Clerk.

8 STATE OF CONNECTICUT, }
County of Hartford, } ss:

GLASTONBURY, CONN., October 17, A. D. 1895.

Then and by virtue hereof, I left a true and attested copy of this motion for an order of mandamus, and of this order of notice with and in the hands of S. H. Williams, treasurer of the town of Glastonbury in said town of Glastonbury.

Attest:

EDWIN J. SMITH, *Sheriff.*

Fees.

Copies.....	\$3 00
Endorsements.....	2 40
Service.....	12
Travel.....	2 00
Time spent.....	1 50

	\$9 02

EXHIBIT "A."

(Annexed to motion for writ of mandamus.)

Final Decree.

Superior Court, Hartford County, June 10, 1889.

STATE OF CONNECTICUT }
 vs. }
THE HARTFORD BRIDGE COMPANY. }

This proceeding authorized by chapter CXXVI of the Public Acts of 1887, being an act entitled "An act to establish free public highways across the Connecticut river in Hartford county," came to this court upon complaint of the State, brought in accordance with said act on the first Tuesday of October, 1887, and by continuance to the present term.

The court finds that the complaint was duly served and all notices and other proceedings required by said act and by law were duly given and taken.

That Edward W. Seymour, Frederick J. Kingsbury, and Thomas Sanford were duly appointed commissioners to lay out and establish highways across the Connecticut river where the toll-bridge of said Hartford Bridge Company now is and across said bridge and across and along the causeways and approaches appurtenant to and connected therewith, and for the other purposes mentioned in said act.

That the said commissioners filed their report August 14, 1888, as on file. That said commissioners laid out and established a highway as follows, viz: "Beginning in the city of Hartford on the east side of Commerce street, as laid out, and at the northwest corner of land occupied by, and supposed to belong to, the New York, New Haven & Hartford Railroad Company; thence easterly in the north line of said last-mentioned land to the Connecticut river, said line being parallel to and thirty-nine and a half (39½) feet south of and distant from a line drawn from said Commerce street to said river extending along the south face of said bridge company's toll-house; thence easterly in the south line of the drawbridge and bridge of the said Hartford Bridge Company to the east bank of said Connecticut river; thence southerly along the east bank of said river about seven hundred and six (706) feet to a dock; thence easterly to the northeast corner of said dock; thence in a straight line southerly to the north line of the Tolland turnpike at a point two hundred (200) feet from the southwest corner of land of George W. Darlin; thence easterly in the line of said Tolland turnpike to land of said Darlin; thence northeasterly in the line of said Darlin's land to the southerly line of the causeway of said bridge company at a point twenty-eight (28) feet easterly from the face of the east abutment of the first dry bridge east of the river; thence easterly

in the southerly line of said causeway along the land of said Darlin, of highway, of land of Frederick Johnson, of land formerly of Luther Morse, deceased, of land of Asher S. Bailey, of highway, and of other land of said Darlin to the northwest corner of land deeded by Joseph M. Merrow to the said bridge company; thence southerly in

the westerly line of said last-mentioned land and of land
10 deeded to said bridge company by — Goodwin to the northerly line of said Tolland turnpike; thence easterly in the northerly line of said turnpike about six hundred and fifty-five (655) feet to the southerly line of said causeway; thence easterly in the south line of said causeway about two hundred and thirty-seven (237) feet to the northwest corner of a piece of land deeded by Nathan Merrow to the said Hartford Bridge Company; thence southerly in the westerly line of said last-mentioned land about one hundred and twenty-two and three-quarters (122.75) feet; thence easterly in the southerly line of said last-mentioned land about three hundred and fifty-four and three-quarters (354 $\frac{3}{4}$) feet to the westerly line of land deeded to the said bridge company by Patrick Garvan; thence southerly in the westerly line of said Garvan's land about five hundred and thirty-one and three-quarters (531.75) feet to a stone; thence easterly about nine hundred and forty-seven (947) feet along the southerly line of said land deeded by said Garvan as aforesaid to a corner marked by a stone; thence northerly along the easterly line of said last-mentioned land about five hundred and sixteen (516) feet to the south line of said causeway; thence easterly in the south line of said causeway and along the line of land of Dominic Flynn, A. G. Olmstead, and First Ecclesiastical Society of East Hartford about fifteen hundred and thirty-five (1,535) feet to the west line of Main street in East Hartford village; thence northerly in the west line of said Main street to the north line of said causeway, said north line being parallel with said south line thereof and four (4) rods distant therefrom; thence westerly in the line of land of Frank W. Richardson, Howard C. Gaines, Joseph Merriman, Richard J. Waterous, Charles B. Phelps, and highway about fifteen hundred and ninety-six (1,596) feet to the west line of a highway leading northerly; thence northerly in the west line of said highway along the easterly line of land sold to said bridge company by Patrick Garvan and Reuben A. Chapman, about five hundred and forty-one and a half (541 $\frac{1}{2}$) feet to corner of highway marked

with a stone; thence westerly and southwesterly in line of
11 said highway, being the Tolland turnpike, about fifteen hundred and seventy-four (1,574) feet to the intersection of said line with the northerly line of said causeway; thence westerly across said turnpike and in the southerly line of Thomas Williams' land, the same being the northerly line of said causeway, to said Williams' southwest corner; thence northerly in said Williams' westerly line, the same being the easterly line of land sold to the said Hartford Bridge Company by Ichabod L. Skinner, to the land of Giles Forbes; thence westerly in the southerly line of said Forbes' land and of land of Anthony Burnham, said line being the northerly line of land purchased by the said bridge company of said

Skinner, about seven hundred and seventy-five (775) feet to the northerly line of said causeway; thence westerly in the northerly line of said causeway along the land of Alexander Schmidt, Frank H. Pitkin, Lyman Risley, highway, lands of George W. Darlin and Jere. Riordan about eleven hundred and sixty-eight and one-half (1,168 $\frac{1}{2}$) feet to the southeasterly corner of land deeded to the said bridge company by Samuel Kellogg; thence northerly along the easterly line of said land deeded by said Kellogg about three hundred and eighty (380) feet to the said Connecticut river; thence southwesterly in the line of said river to the northerly line of the said bridge of the Hartford Bridge Company; thence westerly across said river in the northerly line of said bridge and drawbridge to the west bank of said river; thence northerly along the westerly bank of said river to a line running from Commerce street, as laid out, to said river, parallel to and forty-one (41) feet north from a line drawn along the southerly face of the toll-house belonging to the said bridge company; thence westerly in said line, so drawn, to the easterly line of Commerce street, as laid out; thence southerly in the easterly line of said Commerce street, as laid out, eighty-two and three-tenths (82.3) feet to the place of beginning.

Said lay-out includes the covered bridge and other bridges, causeways, embankments, and lay-out of the Hartford Bridge Company

now used by it as and for a toll-bridge and causeways and
12 approaches appurtenant to and connected therewith; and in

addition thereto it includes as approaches, under the statute in this case provided, certain other real estate, contained within its bounds and description, belonging to the owner of said toll-bridge, to wit: to the Hartford Bridge Company, which real estate is used, and is by us found to be used, in connection with said bridge or for the maintenance or protection of said causeway and which, being so used, is by said statute declared to be and directed to be considered as approaches to and connected with said bridge.

And said lay-out also includes the toll-house belonging to said company and connected with said toll-bridge and declared by said statute to be a part of the toll-bridge with which it is connected.

And said commissioners estimated and assessed the damages caused by the lay-out and establishment of said free highway at two hundred and ten thousand (\$210,000) dollars in favor of the defendant, The Hartford Bridge Company.

That said commissioners found that the towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester will be specially benefited by the lay-out and establishment of such free highway, and estimated and assessed said damages upon said several towns as benefits accruing to said several towns in such proportion as said commissioners found to be equitable, that is to say, as follows: To the town of Hartford ninety-five thousand (\$95,000) dollars, to the town of East Hartford sixty-six thousand (\$66,000) dollars, to the town of Glastonbury twenty-five thousand (\$25,000) dollars, to the town of South Windsor twelve thousand (\$12,000) dollars, to the town of Manchester twelve thousand (\$12,000) dollars.

This court accepts the report of the commissioners as on file, and

approves and confirms the lay-out of said highway and the estimate and assessment of damages caused by the lay-out and establishment of said free highway, and the estimate and assessment of said damages upon said several towns as made by said commissioners,

13 and thereupon and in pursuance of the provisions of said act and of the provisions of an act entitled "An act amending an act entitled An act to establish free public highways across the Connecticut river in Hartford county," passed by the General Assembly at its January session, 1889, and approved June —, 1889, it is ordered and adjudged:

That the town of Hartford shall within three months from the date of rendition of this judgment deposit with the treasurer of this State the sum of fifty-seven thousand (\$57,000) dollars, the sum being 60 per cent. of the sum so assessed against it.

And that the town of East Hartford shall within three months from the date of rendition of this judgment, deposit with the treasurer of this State the sum of thirty-nine thousand six hundred (\$39,600) dollars, the same being 60 per cent. of the sum so assessed against it.

And that the town of Glastonbury shall within three months from the date of rendition of this judgment, deposit with the treasurer of this State the sum of fifteen thousand (\$15,000) dollars, the same being 60 per cent. of the sum so assessed against it.

And that the town of South Windsor shall within three months from the date of rendition of this judgment, deposit with the treasurer of this State the sum of seven thousand two hundred (\$7,200) dollars, the same being 60 per cent. of the sum so assessed against it.

And that the town of Manchester shall within three months from the date of rendition of this judgment, deposit with the treasurer of this State the sum of seven thousand two hundred (\$7,200) dollars, the same being 60 per cent. of the sum so assessed against it.

And the court further orders and adjudges that at the expiration of said three months from the date of the rendition of this judgment the comptroller of the State shall draw his order on the treasurer in favor of the Hartford Bridge Company for the sum of

\$210,000, the same being the amount of the damages that
14 have been so assessed in its favor, and that the treasurer

shall hold the amount thereof, viz., said two hundred and ten thousand (\$210,000) dollars, for the benefit and subject to the order of said Hartford Bridge Company, and shall forthwith notify said Hartford Bridge Company that he so holds said amount, and thereupon as soon as the treasurer shall give said notice said highway so laid out as aforesaid shall become and remain a public highway.

The treasurer of the State shall at the same time give notice to the first selectmen of each of said towns, viz: Hartford, East Hartford, Glastonbury, South Windsor, and Manchester that said highway has become a free public highway to be thereafter maintained by said towns.

It is further ordered that if any of said towns shall fail to pay the judgment rendered against it as aforesaid, execution upon said

judgment shall issue against the towns so failing to pay, in favor of the State.

F. B. HALL, Judge.

I, George A. Conant, assistant clerk of the superior court within and for said county, hereby certify the foregoing to be a true copy of record.

In testimony whereof, I have hereunto set my hand and the seal of said court, this 27th day of June, A. D. 1895.

[SEAL.]

GEORGE A. CONANT,
Assistant Clerk.

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

"EXHIBIT B."

(Annexed to motion for writ of mandamus.)

Being chapter CCCXLIII of the Special Acts of 1895 will be found on page 73 of this record, where it is annexed to the finding as Exhibit B.

15

"EXHIBIT C."

(Annexed to motion for mandamus.)

Vote of Commissioners of Connecticut River Bridge and Highway District Determining Proportions of the Several Towns.

At a meeting of the commissioners for the Connecticut River bridge and highway district duly and legally warned and held at 218 Main street, Hartford, Connecticut—present. Morgan G. Bulkeley, A. O. Crosby, Charles W. Roberts, John G. Root, Meigs H. Whaples, and Lewis Sperry—the following resolution was passed:

"Resolved, That whereas expenses amounting to the sum of five hundred dollars (\$500) have been incurred for the ordinary support and maintenance of the highway across the Connecticut river at Hartford and the causeway appurtenant thereto, this commission hereby determines under the provisions of chapter 343 of the Special Acts of 1895, the following sums as the proportions of said towns, viz:

The town of Hartford $\frac{7}{10}$, being the sum of \$395.00.

The town of East Hartford $\frac{1}{10}$, being the sum of \$60.00.

The town of Glastonbury $\frac{3}{10}$, being the sum of \$15.00.

The town of South Windsor $\frac{3}{10}$, being the sum of \$15.00.

The town of Manchester $\frac{3}{10}$, being the sum of \$15.00.

Passed and adopted September 14, 1895.

Attest:

MEIGS H. WHAPLES,
Secretary pro Tem.

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

"EXHIBIT D."

(Annexed to motion for mandamus.)

Order of the Commissioners for the Connecticut River Bridge and Highway District to the Treasurer of the Town of Glastonbury.

At a meeting of the commissioners for the Connecticut River bridge and highway district duly and legally warned and held at 218 Main street, Hartford, Connecticut—present, Morgan G. Bulkeley, A. O. Crosby, Charles W. Roberts, John G. Root, Meigs H. Whaples, and Lewis Sperry—it is ordered:—

That whereas the commissioners for the Connecticut River bridge and highway district by resolution passed and adopted on the 14th day of September, 1895, as follows, to wit:

"Resolved, That whereas expenses amounting to the sum of five hundred dollars (\$500) have been incurred for the ordinary support and maintenance of the highway across the Connecticut river at Hartford and the causeway appurtenant thereto, this commission hereby determines under the provisions of chapter 343 of the Special Acts of 1895, the following sums as the proportions of said towns, viz:

The town of Hartford $\frac{7}{10}$, being the sum of \$395.00,

The town of East Hartford $\frac{1}{10}$, being the sum of \$60.00,

The town of Glastonbury $\frac{3}{10}$, being the sum of \$15.00,

The town of South Windsor $\frac{3}{10}$, being the sum of \$15.00,

The town of Manchester $\frac{3}{10}$, being the sum of \$15.00,
have determined the proportion required of the town of Glastonbury for the ordinary support and maintenance of the highway across the Connecticut river at Hartford and the causeway appurtenant thereto, to be the sum of fifteen dollars (\$15), the said town of Glastonbury by its treasurer is hereby required and ordered to pay to the said commissioners for the Connecticut River bridge and highway district or to treasurer thereof the said sum of fifteen dollars (\$15), upon the presentation of this order.

17 And it is further ordered:—

That Meigs H. Whaples, treasurer of the said the commissioners for the Connecticut River bridge and highway district, be and he is hereby directed and authorized to present this order to the treasurer of the town of Glastonbury, and upon payment thereof to give proper receipts therefor in the name of and in behalf of said commissioners.

Passed and adopted September 14, 1895.

Attest:

MEIGS H. WHAPLES,
Secretary pro Tem.

Payment of this order refused Sept. 21, 1895—as ordered by vote of the town of Glastonbury.

S. H. WILLIAMS, *Treas.*

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

Defendant's Return.

ARTHUR F. EGGLESTON, State's Attorney for the County of Hartford,
vs.
S. H. WILLIAMS, Treasurer of the Town of Glastonbury.

To the honorable superior court now in session at Hartford, in and for the county of Hartford:

The defendant in the above-entitled case, in obedience to an order and rule of this court, made upon the application of Arthur F. Eggleston, attorney for the State of Connecticut, within and for Hartford county, to show cause why a writ of mandamus should not issue against him as treasurer of said town of Glastonbury, as prayed for in said application, appears in court, and for cause shows as follows:

1. Paragraphs 1, 3, 7, and 8 of said application are admitted.
2. Paragraphs 2 and 4 are denied.

3. So much of paragraph 5 as alleges that "said commissioners duly determined by resolution passed on the 14th day of September, 1895, a copy of which is annexed and made a part of this application marked 'Exhibit C,' the proportion of said expense to be paid by the town of Glastonbury to be the sum of fifteen (\$15.00) dollars" is admitted. The rest of said paragraph is denied, and this defendant says that a large portion of the expenses alleged in said paragraph to have been incurred by said commissioners, was incurred for the construction of a permanent bridge across said

Connecticut river as set forth in paragraph 24 of this return.

19 4. As to paragraph 6, this defendant admits that said commissioners made the order referred to in said paragraph and stated said proportion to be paid by said town of Glastonbury. The rest of said paragraph is denied.

5. By the terms of "An act concerning the Hartford bridge," being chapter 239 of the Public Acts of 1893, it is provided that the highways across the Connecticut river at Hartford—where the bridges, as laid out and established in accordance with the provisions of chapter 126 of the Public Acts of 1887, then were, together with said bridges and causeways, and approaches appurtenant to and connected therewith—should thereafter "be maintained by the State of Connecticut at its expense." It is also provided in said act, approved June 29, 1893, that three commissioners should be appointed by the governor, with the consent of the senate, who should constitute a board for the care, maintenance, and control of said highways and bridges, and that the "expense of repairing and maintaining said highways and bridges should be incurred by said board of commissioners on behalf of the State." In accordance with said act, George W. Fowler of Hartford, Charles W. Roberts of East Hartford, and John H. Hale of Glastonbury were duly appointed commissioners by the governor of the State, with the consent of the senate, to constitute a board for the care, maintenance, and control of

said highways and bridges. Said Fowler, Roberts, and Hale entered upon their duties as such commissioners on the fifteenth day of July, A. D. 1893, and for and on behalf of the State took the care, maintenance, and control of said highways and bridges. On the 31st day of January, A. D. 1894, said John H. Hale resigned his office of commissioner under said act, and thereafter said George W. Fowler and Charles W. Roberts continued to act as commissioners under said act, approved June 29, 1893, and continued to take the care, maintenance, and control of said highways and bridges for and on behalf of the State, and incurred large expenses in the repairs and maintenance of said highways and bridges, which 20 said expenses were incurred by said board of commissioners on behalf of the State of Connecticut, and were paid by said State.

6. The bridge across the Connecticut river between the towns of Hartford and East Hartford, which formed a part of said highway, having become out of repair, defective and unsafe for the public travel thereon, said commissioners on the thirteenth day of November, A. D. 1894, for and on behalf of the State, made a contract with the Berlin Iron Bridge Company—a corporation organized under the laws of the State of Connecticut, and having its office and place of business at Berlin, in said State—to construct a bridge across said river, between said towns of Hartford and East Hartford—where the bridge, as laid out and established in accordance with the provisions of chapter 126 of the Public Acts of 1887 then was—and on January 14, 1895, said contract was amended in writing between the said The Berlin Iron Bridge Company and said commissioners. A copy of said contract and amendment is hereto annexed, is made a part of this return, and is marked Defendant's "Exhibit I."

7. In accordance with said contract, said The Berlin Iron Bridge Company, on the fourteenth day of November, 1894, commenced the construction of said bridge, and on November 28, 1894, commenced the construction of a temporary bridge designed for the accommodation of public travel, while said bridge provided for by said contract was being built, and afterwards manufactured large quantities of material, furnished a large amount of labor at an expense amounting in the whole to above the sum of sixty thousand (\$60,000) dollars, which said expense the said board of commissioners incurred on behalf of the State of Connecticut, and in accordance with the provisions of said act.

8. On May 17, 1895, while the said The Berlin Iron Bridge Company was performing said contract and was constructing said temporary bridge, under said contract, the bridge which formerly existed between the towns of Hartford and East Hartford, and which the new bridge provided for by said contract was intended to take the place of, was totally destroyed by fire.

21 9. On May 18, 1895, said commissioners requested and required the said The Berlin Iron Bridge Company to make provision for the public travel across the Connecticut river under said contract of November 13, 1894, and amended January 14, 1895, which said requirement was in words and figures as follows:

To the Berlin Iron Bridge Company:

In view of the present emergency occasioned by the destruction of the Hartford bridge, you are hereby requested and required to make immediate provision for public travel across the Connecticut river, under your contract of November 13, 1894, amended January 14, 1895, by the erection of a temporary bridge as contemplated by said contract.

Hartford, Conn., May 18, 1895.

CHARLES W. ROBERTS,

GEORGE W. FOWLER,

*The Board of Commissioners for Hartford Bridge, Acting
for and in Behalf of the State of Connecticut.*

10. Afterwards said The Berlin Iron Bridge Company continued the construction of said temporary bridge, and also continued to perform the contract made with the State as aforesaid, for the construction of a bridge across said river until the passage and approval of the acts of the General Assembly as hereinafter set forth.

11. By the passage of an act entitled "An act concerning the Hartford bridge," being chapter 168 of the Public Acts of 1895, approved May 24, 1895, the General Assembly of the State undertook to repeal chapter 239 of the Public Acts of 1893 by authority of which said contract had been made with the Berlin Iron Bridge Company, and which was then being performed both by the State and said company. Said act also provided that, "from and after the passage of this act, the towns of Hartford, East Hartford, Glastonbury,

South Windsor, and Manchester, shall, except as hereinafter provided, maintain the highway across the Connecticut river, where the bridge formerly conducted by the Hartford Bridge Company as a toll-bridge now is, and across said bridge, and across and along the causeways and approaches appurtenant to and connected therewith." Said act also provided for a commission to consist of the Hon. Dwight Loomis of Hartford, and the comptroller and treasurer of the State, "to hear and determine all legal claims and demands, not to exceed forty thousand dollars (\$40,000), presented to them within six months from and after the passage of this act, arising under and by virtue of any contract made and executed by the commissioners appointed under chapter 239 of the Public Acts of 1895 with any party, particularly with the Berlin Iron Bridge Company, Connecticut." Said act also provided that "if any such party or parties, particularly the Berlin Iron Bridge Company, shall not be satisfied with the decision of said commission, permission and authority is hereby given to such party or parties, particularly the said The Berlin Iron Bridge Company, at any time within three years from and after the passage of this act, to commence and prosecute a suit or suits against the State of Connecticut, in the superior court for Hartford county, for any legal claim, debt, or demand arising under and by virtue of any valid contract made and executed by said commissioners, under and by the provisions of said public acts of 1893, acting within the legal scope of their authority with any party, and particularly with the

said The Berlin Iron Bridge Company, or for the construction of any contract with the said commissioners alleged by such plaintiff to be valid and binding upon the State of Connecticut, according to the ordinary procedure in civil actions in this State." It was also provided in said act that "if any contract for the building of a bridge over the Connecticut river between the towns of Hartford and East Hartford, alleged to have been made by said commissioners with the Berlin Iron Bridge Company, shall be declared valid and binding upon any complaint brought for its construction as hereinbefore provided, then the comptroller is authorized and directed to carry out and complete said contract according to the provisions thereof."

23 12. Said act of the General Assembly approved May 24, 1895, is in violation of the Constitution of the United States and of the 10th section of article one thereof, because it impairs the obligations of said contract existing between the State of Connecticut and the Berlin Iron Bridge Company, for the construction of a bridge across said Connecticut river, between the towns of Hartford and East Hartford, dated the 13th day of November, 1894, and amended January 14, 1895, and reaffirmed the 18th day of May, 1895.

13. Said order and requisition of said commissioners passed on the 14th day of September, 1895 (Plaintiff's Exhibit "D"), by the terms of which the said town of Glastonbury was ordered and required to pay by its treasurer to the said the commissioners of the Connecticut River bridge and highway district, or to their treasurer, the said sum of \$15.00, and all proceedings thereunder are in violation of the Constitution of the United States and of the 10th section of article one thereof, and void for the reasons alleged in paragraph 12.

14. Said act, approved May 24th, and said order and requisition of said commissioners, dated September 14, 1895, are in violation of the constitution of this State, and of sections 1 and 11 of the first article thereof, because said act denies to said towns and to the citizens thereof equal rights under the laws of the State, and because it takes the property of said towns and of the citizens thereof without just compensation therefor.

15. Said bridge across Connecticut river, between the towns of Hartford and East Hartford, and said highway across said bridge and across and along the causeway and approaches appurtenant to and connected therewith, are wholly outside of the territorial limits of said town of Glastonbury, and said act compels the town of Glastonbury and the defendant, as treasurer for said town, to

24 pay out of the funds and moneys of said town, the expense of building said bridges, highways, causeways, and approaches, and for the repair and maintenance of said bridges and highways, not being within its limits, and denies to the defendant and to said town of Glastonbury, of which he is treasurer, and to the citizens of said town, the equal protection of the laws, and especially of sections 2665, 2666, 2667, and 2768 of the General Statutes of this State; which is in violation of the Constitution of the United States, and particularly of article 14 of the amendments thereof, because

said act deprives said town and the citizens thereof, of their property without due process of law, and denies to said town and the citizens thereof, both being within the jurisdiction of the State of Connecticut, the equal protection of its laws.

16. By the terms of a special act entitled "Creating the Connecticut River bridge and highway district," passed by the General Assembly of this State, and approved June 28, 1895, it was provided among other things (section 1), "That the towns of Hartford, East Hartford, Glastonbury, Manchester, and South Windsor be, and they hereby are, created a body politic and corporate, with power to sue and be sued, under the name of the Connecticut River bridge and highway district, for the construction, reconstruction, care, and maintenance of a free public highway across the Connecticut river at Hartford, and the causeway and approaches appurtenant thereto, as described in a decree of the superior court of Hartford county, passed on the 10th day of June, 1889, in which decree said highway was laid out and established." It was also provided (section 2) in said act, that "Morgan G. Bulkeley, Meigs H. Whaples, John G. Root, and John H. Hall of Hartford; James W. Cheney of Manchester; Alembert O. Crosby of Glastonbury; John A. Stoughton of East Hartford; and Lewis Sperry of South Windsor, are hereby appointed commissioners for said district, with authority to maintain said free public highway, and whenever public safety or convenience may require it, erect new bridges along or upon said highway, to reconstruct, raise, and widen the causeway and
25 approaches appurtenant to, or a part of said highway, at the expense of the towns named in 'section 1' of this act, and composing said bridge district, at a cost not exceeding five hundred thousand (\$500,000) dollars." It was also provided in section 7 of said act, that "said commissioners are empowered to make any and all orders, and to do all things necessary for the construction, reconstruction, and improvement of said highway and the causeway and approaches appurtenant thereto, including all bridges necessary for the safety and convenience of public travel." It is also provided in section 9 of said act, that—

"The commissioners appointed under chapter 239 of the Public Acts of 1893 are hereby authorized and directed to turn over to the board of commissioners herein appointed, immediately on the organization of said board, all the property of every name and nature in their hands or under their control under the act of 1893, herein-after referred to, including all books, papers, and contracts."

Said special act is made a part of the application in this case, and is designated in said application as "Exhibit B."

17. The said special act approved June 28, 1895, and said public act approved May 24, 1895, constitute the only authority for the demand and requisition made on said town of Glastonbury, and on this defendant, as treasurer of said town, by said commissioners of the Connecticut River bridge and highway district, being the relators in this application, dated September 14, 1895, and made "Exhibit D" in said application. And said acts also constitute the only authority for all of the acts of said commission in relation to

said the Connecticut River bridge and highway district as set forth in said application.

18. Said special act, approved June 28, 1895, is in violation of the Constitution of the United States and of the tenth section of article one thereof, because it impairs the obligations of the said contract existing between the State of Connecticut and the Berlin

Iron Bridge Company for the construction of a bridge across
26 the Connecticut river between the towns of Hartford and
East Hartford, and dated the 13th day of November, 1894,
and amended January 14, 1895, and reaffirmed the 18th day of
May, 1895.

19. Said special act is in violation of the constitution of the State of Connecticut, and of sections 1 and 11 of the first article thereof, for the same reasons as alleged in paragraphs 14 and 21 of this return.

20. It is not the duty of said town of Glastonbury, nor is said town obliged by law to maintain the highway across the Connecticut river, as set forth in said act, or across or along the causeway or approaches appurtenant thereto, or to erect or build any bridge or bridges along or upon said highway or approaches connected therewith, or at any time or in any way to maintain or keep in repair said highway, or any of said bridges, causeways, or approaches as therein named.

21. Said town of Glastonbury is obliged by the statute laws of this State, to pay one-half of the expense of maintaining a ferry and highway across said Connecticut river, between said town and the town of Rocky Hill, and this defendant says that said bridge and highway across Connecticut river between the towns of Hartford and East Hartford, and the causeways and approaches appurtenant to and connected therewith, are wholly outside of the territorial limits of said town of Glastonbury, and said special act compels the defendant as treasurer for said town to pay out of the funds and moneys of said town the expense of building said bridges, highways, causeways, and approaches, and for the repairs and maintenance of said bridges and highways, not being within its limits, and denies to the defendant and to said town of Glastonbury, of which he is treasurer, and to the citizens of said town, the equal protection of the laws, and especially of sections 2665, 2666, 2667, and 2768 of the General Statutes of this State; which is in violation of the Constitution of the United States, and article 14 of the amendments thereof, for the same reasons as alleged in paragraph 15.

22. Section 1 of said special act, approved June 28, 1895,
27 provides that the towns of Hartford, East Hartford, Glaston-
bury, Manchester, and South Windsor shall be and they
hereby are created a body politic and corporate with power to sue
and be sued, under the name of the Connecticut River bridge and
highway district, for the construction, reconstruction, care, and
maintenance of a free public highway across the Connecticut river
at Hartford and the causeway and approaches appertaining thereto;
and this defendant says that no general power to sue and be sued
is conferred upon said board of commissioners by the provisions of

said act, and this defendant further says that no power is given by said act to said commissioners to institute suits in their own names, and that this proceeding is not properly brought in the names of said commissioners against this defendant.

And the defendant further says that this proceeding by mandamus is not properly brought against this defendant alone, without joining the respective treasurers of all the other towns of said district, and also the towns composing said highway district and body politic and corporate.

23. Said special act also provides (section four) that "for the purpose of providing means for the construction of a new bridge or bridges along said highway, or for the permanent improvement of said causeway or approaches by widening or raising the same; said board of commissioners is hereby authorized to issue the bonds of said district to an amount not exceeding five hundred thousand dollars, to run for not exceeding fifty years, and bearing a rate of interest to be determined by said commissioners, payable semi-annually, provided that not less than ten thousand dollars of said bonds shall be made due and payable each and every year from the date of issue." And said act further provided that for the payment of said bonds as they mature, and interest upon the same, the several towns named in the first section of this act shall annually pay over to the treasurer of said bridge commission on his written order, a sum equal to twenty-five cents on each one thousand dollars of the grand list of each town, until the proportionate

28 cost to each of said towns, as thereafter provided, has been fully paid. Said section attempts to compel said towns to pay a debt which they have not contracted, and takes the property of said towns and of the citizens thereof to pay for the expense of constructing said new bridge or bridges along said highway and for the repair and permanent improvement of said highway and causeway by widening or raising the same, against their consent, and is in violation of the Constitution of the United States, and particularly of the 14th article of the amendments thereof, for the same reasons as alleged in paragraph 15 of this return.

24. The greater part of the expense incurred by said commissioners, the relators in the present application, and for the payment of a proportion of which said demand and requisition was made on said town of Glastonbury, and on this defendant, as treasurer of said town, September 14, 1895, was incurred by said commissioners in connection with, and in preparation for, the construction of a permanent bridge across said river at the point described in said contract, dated November 13, 1894, made by the State through its commissioners under the act approved June 29, 1893, with the said The Berlin Iron Bridge Company. Said The Berlin Iron Bridge Company, in accordance with the provisions of "section three" of said public act approved May 24, 1895, has within six months after the passage of said act presented certain legal claims and demands to the commission provided for by said section three of the public act, approved May 24, 1895, and arising under and by virtue of said contract, which said claim and demand is now pending before said

commission, and no decision has been rendered thereon. And said The Berlin Iron Bridge Company has not yet brought suit in the superior court for the county of Hartford, for any legal claim, debt, or demand arising under and by virtue of said contract, or of any valid contract made and executed by said commissioners, under and by the provisions of said public act of 1893, acting within the legal scope of their authority with any party, and particularly

wit-th~~e~~ said The Berlin Iron Bridge Company, nor has the
 29 said The Berlin Iron Bridge Company yet brought suit for
 the construction of said contract, or of any contract with said
 commissioners, alleged by such plaintiff to be valid and binding
 upon the State of Connecticut, or to determine the validity of said
 contract; nor has the term of three years, within which such suit
 or suits may be brought by the said The Berlin Iron Bridge Com-
 pany, for the construction of said contract, or of any contracts with
 said commissioners, alleged by such plaintiff to be valid and bind-
 ing upon the State of Connecticut, as provided in "section four" of
 said act, yet expired. If said commissioners have any power under
 said act, they have no power to require and order said town of
 Glastonbury, or this defendant as treasurer of said town, to pay any
 of the expense or cost of said bridge across Connecticut river be-
 tween the towns of Hartford and East Hartford, until the expira-
 tion of said term of three years, or until a construction of said con-
 tract has been obtained in a suit brought under the provisions of
 said act.

Wherefore for each and all of the causes and reasons in this his return set forth, the defendant insists that said writ of peremptory mandamus shall not issue, as prayed for in said application, and he prays the judgment of the court thereon, and that he may be hence dismissed.

Dated at Hartford this 25th day of November, A. D. 1895.

S. H. WILLIAMS,
Treas. of the Town of Glastonbury.

STATE OF CONNECTICUT, }
 Hartford County. }

HARTFORD, CONN., Nov. 25, 1895.

Then personally appeared S. H. Williams, treasurer of the town of Glastonbury, and made oath that the foregoing return by him subscribed is true to the best of his knowledge and belief.

Before me,

JOHN H. BUCK,
Commissioner of the Superior Court.

Filed Nov. 25, 1895.

(Annexed to defendant's return)

being the vote of commissioners for Connecticut River bridge and highway district determining proportions of the several towns, will be found on page 15 of this record, where it is annexed to the motion for writ of mandamus.

EXHIBIT "I."

(Annexed to defendant's return.)

Contract of the State of Connecticut with the Berlin Iron Bridge Company for the Construction of a Bridge.

This agreement, made this 13th day of November, A. D. 1894, by and between George W. Fowler of Hartford and Charles W. Roberts of East Hartford, the board of commissioners for Hartford bridge, acting for and in behalf of the State of Connecticut, party of the first part, and The Berlin Iron Bridge Company, a corporation duly organized under the laws of the State of Connecticut, and located in the town of Berlin, in said State, party of the second part, witnesseth:

The party of the second part, in consideration of the payments to be made to it as hereinafter provided, hereby promises and agrees to construct and erect a highway drawbridge across the Connecticut river between the towns of Hartford and East Hartford, upon the site now occupied by the Hartford bridge, so called; to erect the abutments and piers for said bridge; to make such provision for public travel during the progress and until the completion of said work that said travel shall not be interrupted or seriously impeded; to furnish and provide all materials and labor for said work; to commence said work forthwith, and to have the same completed on or before July 1, 1895; to do said work in strict accordance with the plan and specifications hereto attached, and made part of this contract.

31 The party of the first part, in consideration of the performance by the party of the second part of its promises and agreements hereinbefore contained, hereby promises and agrees to pay the party of the second part the sum of two hundred and seventy-four thousand nine hundred dollars (\$274,900), as follows, to wit: At the end of each calendar month the engineer of the party of the first part shall estimate the proportionate cost of work done and material delivered during such month, basing such estimate upon the attached schedule of cost, and shall return certificate of such estimate to the party of the first part and to the party of the second part. Ninety per cent. of such estimate shall be paid on the tenth day of the month next following, and the balance of said contract price when the entire work is completed and accepted by the party of the first part.

Schedule of Cost.

Completion of temporary bridge.....	\$18,000
Removal of old bridge and piers.....	9,000
Completion of west abutment.....	16,000
Completion of each pier.....	11,000
Completion of east abutment.....	20,000
Delivery of iron-work for 106-ft. span and lift-span.....	16,000
Delivery of iron-work for each other span.....	16,000
Completion of each span.....	8,000

Executed in duplicate the day and year first above written.

GEORGE W. FOWLER,
CHARLES W. ROBERTS,

*The Board of Commissioners for Hartford Bridge,
Acting for and in Behalf of the State of Connecticut.*
THE BERLIN IRON BRIDGE
COMPANY,
By GEORGE H. SAGE, Secretary.

Witnesses:

ARTHUR P. MOORE.
HUGH M. ALCORN.

32 *Specifications for Steel Highway Bridge Over the Connecticut River Between Hartford and East Hartford, Connecticut, 1894.*

General description of superstructure.

The superstructure will consist of five (5) fixed spans, each 158' 4" center to center of end pins, one fixed span 106' 6" center to center of end pins, and one lift-span 36' 6" long; the roadway 30' in the clear, one walk on upstream side of bridge 10' in the clear. On downstream side of roadway, outside of truss, provision shall be made for electric cars. Distance from railing to iron-work on bridge to be at least 12' in the clear. The six (6) fixed spans will consist of Pratt trusses, with floor for roadway and sidewalk of I beams and buckle plates covered with concrete and asphalt, in accordance with the plans approved by the bridge commissioners or their engineer. The lift-span will consist of plate girders, with floor of I beams, on which 4" Georgia pine timber containing 12 lbs. creosote oil per cubic foot shall be placed for the roadway and sidewalk; on top of which creosoted plank shall be placed $\frac{1}{2}$ T. & G. pine sheathing, on which sheathing shall be placed asphalt wearing surface, as shown by plan.

Throughout the entire length of the bridge on the electric railroad, supports of superstructure shall be left ready for the ties and rails, which ties and rails shall not be included in the proposal.

An ornamental railing, of design approved by the bridge commissioners, shall be placed on the outside of the electric railroad track; also on the outside of walk, as shown by plans.

Whenever in the drawings one-half of a truss or member is shown, the other half is to be built in an identical manner (providing for right and left connections, if necessary) with the part shown.

33 Whenever several members or parts of the same kind and same relative position in the bridge, and having the same or similar duties to perform, are shown, the dimensions of all of these members or parts shall be the same, unless otherwise marked or specified.

Details of Construction and Workmanship.

All workmanship shall be first-class in every particular. Abutting joints in top chords shall be in exact contact throughout, and fully spliced.

Eye-bars belonging to the same member must be bored with such exactness that on being piled on each other the pins shall pass through the holes at both ends without driving.

All metal work shall be laid from templets, which shall be accurately made in accordance with the plans.

The contractor is to make all calculations of slant lengths, ordinates, camber, etc., which may be necessary in laying out the work.

All parts and members must be thoroughly straightened or curved as required, and free from twists, kinks, and buckles.

All component parts of built members must be riveted together in close contact.

All web plates are to be neatly sheared to the true lines and curves, so that they shall not project beyond the flange angles of the girders, and shall not fall short of the backs of these angles by more than $\frac{1}{8}$ ".

All plates not over 32" wide are to be universal mill plates, with both of the long edges rolled full and true to line and width.

All curved and bent members shall be worked to the true curves and angles upon proper formers, and by methods and appliances which will give the required results with the least amount of local initial stress upon the material.

Each of the separate members and parts of the metal work shall be clearly and distinctly marked before leaving the shops
34 with a distinguishing letter, number, or combination of letters and figures; and the same marks shall be placed upon a set of blue prints of the drawings, which is to be used to locate the metal during the erection of the work.

Riveted work.—Machine-driven rivets are to be of extra soft steel, or double-refined iron. Field or hand-driven rivets are to be of double-refined iron.

Rivets are to be machine driven wherever practicable.

The diameter of the punch used for rivet holes is not to be more than $\frac{1}{16}$ " larger than the specified diameter of the rivet, and the diameter of the die shall not be more than $\frac{1}{16}$ " larger than that of the punch.

Rivet holes must fit accurately over one another, so as to allow the easy passage of the rivet without the violent use of the drift-pin, and without enlargement by means of a cold chisel, or any other tool except fluted reamers.

Rivets shall preferably have heads of full hemispherical shape, whose diameter shall not be less than $1\frac{1}{4}$ " for $\frac{3}{8}$ " rivets, and $1\frac{1}{16}$ " for $\frac{5}{8}$ " rivets.

If another form of head is used, it shall contain as much material as in the heads above specified; and the shape of the head must

be uniform throughout, as well as the size for the same diameter of rivet.

Rivets shall be carefully heated to a uniform heat, and driven before cooling. They are to be upset straight so as to entirely fill the holes, thoroughly and neatly cupped with heads concentric with the body of the rivet.

All loose and imperfect rivets are to be cut out and replaced by tight and sound ones.

Rivet heads are to be countersunk when so shown, or whenever necessary, to avoid interfering with other members.

In all cases the diameter of rivet marked on the plans shall be understood to mean the diameter of the rivet before driving.

Cast-iron bearings on the pier and abutment shall be planed to true contact surfaces. Other bearings shall be smooth, true and out of wind.

35 Steel shall not be worked at a heat between the ordinary temperature of the air and a full red heat.

All steel which is bent hot shall be properly annealed after bending.

In any portion of the finished work, when troughs or channels occur which are capable of holding water, these spaces shall be filled with asphalt, putty, or other elastic and waterproof material.

Approval of Drawings.

Copies of all shop plants must be submitted to the engineer of the bridge commissioners, and no material ordered or work done until these plans are approved by said engineer.

Quality of Material

Steel.—All steel used in the bridge must be of uniform quality, and furnished by manufacturers of established reputation.

All steel shall be manufactured by the acid or basic open-hearth processes.

Acid open-hearth steel must not contain more than .08 per cent. of phosphorus, and basic steel not more than .06 per cent. of phosphorus.

No steel used for members which are bent hot shall contain more than .03 per cent. of sulphur.

All plates and other shapes, or sections rolled of steel shall be of full and true size and thickness, straight, and of smooth finish, and free from buckles, flaws, cracks, checked edges, or other imperfections.

All steel (except rivet steel) must have an ultimate tensile strength of not less than 56,000 lbs. per square inch, nor more than 64,000 lbs. per square inch, and an elastic limit of not less than 33,000 lbs. per square inch.

All steel must show an elongation before rupture of not less than 25 per cent., a reduction of area at the point of fracture of 45 per

36 cent., and must bend cold 180 degrees to a curve, the diameter of which is equal to the thickness of the piece tested, without sign of fracture on the outside of the bent portion; and, if used for any members which are bent hot to an angle or curve, it must stand the bending test specified, after having been raised to a red heat, and while red hot plunged into cold water.

Punched holes shall bear enlargement by means of the drift-pin to $1\frac{1}{2}$ times their original diameter, as hereinafter more fully specified.

In addition to the above requirements all steel shall bear the ordinary processes of straightening, hot and cold bending, shearing, punching, drifting, etc., necessary in the manufacture. If these processes are performed in a proper manner and with suitable tools a failure to withstand the ordinary treatment in manufacture or erection, or the development of flaws or cracks thereunder, shall be a sufficient cause for the rejection of the pieces affected and a retest of the other pieces from the same melt or blow.

Rivet steel shall be extra soft, having a tensile strength of not less than 50,000 lbs. per square inch, nor more than 55,000 lbs. per square inch, and must bear bending hot or cold until the sides of the bent rivet are in close contact throughout, without sign of fracture on the outside of curve.

Rivet iron shall be double refined, with the same qualifications in regard to tensile strength and bending as for rivet steel.

Cast iron.—All cast iron shall be tough, gray iron, having a tensile strength of 16,000 lbs. per square inch. A hammer blow upon an edge or corner of a casting of this metal shall indent the edge without causing the metal to flake off.

All castings are to be made in fine sand moulds, giving a smooth finish, with all angles clear cut and sharp; and the castings must be free from cold shuts and large or injurious blow-holes.

Castings shall be cleaned from adhering sand before painting, and all gates, fins, or other accidental projections chipped down to a flush surface.

Lumber.—All lumber and timber is to be straight-grained, 37 free from large or loose knots, wane edges, through or round shakes, large or through season cracks, decay, mould, worm-holes, or any defects impairing its strength or durability.

Wherever "hard pine" is shown or specified, it shall be understood to mean Georgia "hard pine" of the quality known in the lumber trade as "prime," and is to conform to the classification and specification for yellow-pine lumber adopted by the Southern Lumber and Timber Association. All lumber is to be sawed straight, and of full and even width and thickness.

Asphalt.—All asphalt must be the best quality of Trinidad asphalt.

Concrete.—The concrete in superstructure shall be of the same quality as specified in the substructure.

Inspection and Tests.

The contractor is to furnish all proper and customary facilities for the inspection of the materials used for and work done upon the bridge, from and in the rolling mills to the final completion of the bridge at the site.

He must furnish and prepare the specimens required for testing, and furnish and operate a testing machine of not less than 50,000 lbs. capacity for the tests, without extra charge.

Duplicate copies of all stock and order lists shall be transmitted to the bridge commissioners or their duly authorized agent when the stock is ordered.

Except for minor parts and with the permission of the bridge commissioners or their duly authorized agent, all the steel used in the bridge shall be rolled especially for this work, and subject to inspection; and the bridge commissioners or their duly authorized agent shall be duly informed of the names of the manufacturers, together with the time and place of rolling.

All requirements of ultimate strength, elasticity, and ductility herein specified, must be established by at least three tests 38 for each separate melt of steel; and the test-pieces shall be so selected from the finished material that each furnace heat shall be represented by at least one test.

All of the above tests shall be made upon standard test-pieces, cut from the shapes and sections of finished material actually used.

The test-pieces shall be of the full thickness of the piece from which they are cut, with two of the sides in the condition in which they came from the rolls, the other two sides to be planed parallel for a distance not less than twelve times the diameter of the piece, and all test-pieces to be at least one-half square inch in sectional area. The stretch to be measured in a length of not less than 8".

Drifting tests may be required from each heat of steel rolled into finished plates or shapes as follows: The test-pieces are to be 4" long and $3\frac{1}{2}$ " wide except when cut from sections less than $3\frac{1}{2}$ " in width, in which case they are to be the full width of the piece.

The end edges of the pieces are to be sheared, the side edges may be rolled or planed, and the flat sides are to be in the same condition in which they left the rolls.

In the center of each test-piece a hole is to be punched $\frac{13}{16}$ " in diameter and without reaming, and these holes must bear enlargement by means of a drift-pin when the metal is cold, to $1\frac{1}{4}$ " in diameter, without causing a crack to appear either in the periphery of the hole or in the edges of the test-piece.

All blooms, billets, or slabs, shall be thoroughly inspected for flaws, blow-holes, or other defects, before being rolled into the finished sections; and all defective or imperfect portions must be trimmed off, so that they shall not impair the quality of the finished product.

Each piece of finished steel, or each bundle of small pieces, shall be conspicuously stamped or marked with a number identifying the

melt or blow, and proper means of identification of the original melt or blow number shall be used throughout all processes of the manufacture.

All chemical analyses made by the manufacture upon material used in the bridge shall be forwarded to the bridge commissioners or their duly authorized agent, before the shipment of material from the mill.

Painting.

All scale and rust is to be thoroughly removed from the surfaces of the metal before assembling.

All surfaces of the metal work which are to be riveted together, in close contact, shall have one coat of paint before assembling.

All surfaces of the metal work, not in absolute contact, but which cannot be easily painted after riveting up or erecting, are to have two coats of paint before assembling.

All machine-finished surfaces are to be protected by a coat of white lead and tallow.

All other surfaces of the metal are to have one coat of the best boiled linseed oil, before shipment.

After erection, all dirt, dust, and cinders shall be thoroughly removed from the metal work, and the whole surface including the interior portions of chords, compression members, and joints, wherever accessible, is to receive two coats of paint, the first coat to be allowed sufficient time to thoroughly dry and harden before applying the second.

All oil must be of the best quality of pure linseed oil.

All paint used is to be thoroughly and evenly applied, and well worked into all crevices, so as to reach and cover all portions of the metal work which are exposed to the air; and no metal is to be painted when wet or covered with frost, snow, or ice.

Erection.

The contractor is to furnish all materials and labor for erecting and is to erect the bridge in place. The false work employed must be of a suitable character and strength.

The contractor is to remove all waste materials and all rubbish produced by his work, and leave the bridge and its approaches in a neat condition, when completed.

For masonry.

The masonry is to be constructed strictly in accordance with the plans approved by the engineer of the bridge commissioners. All masonry shall be first class except the footing courses, the backing of the abutments, and the core of the piers.

All face stone masonry will be good, sound, and clear granite

with no cracks, bad seams, or discolorations. All stone will be laid with the stratification (grain) horizontal. Footing stone and backing will be sound stone and laid in their natural beds.

Bridge seat courses will be quarry-faced, point-dressed on beds, pene-hammered on top, with no slack places.

Bearing stone will be bush-hammered on top.

Parapet coping will be cut for a cornice, point-dressed on top, leaving no slack spots. They will be pitched to a width on top, joints not to exceed $\frac{1}{4}$ ", and be grouted. All parapet coping will have good and full beds. Quarry-faced stone must be clean split with no projections to exceed $1\frac{1}{2}$ " outside of line of drift-lines, with no deep valleys, and must not show holes drilled for splitting. First-class masonry will consist of—

1st. Stones cut to dimensions, laid in horizontal courses, alternating headers, and stretchers laid in cement mortar; at least one-quarter of the wall shall consist of headers.

2d. All stone will be quarry-faced. All beds will be roughly dressed for their entire surface. Horizontal joints will not exceed $\frac{1}{2}$ " for 16" back from face. Vertical joints will not exceed $\frac{1}{2}$ " for 10" back from the face.

3d. Headers will be at least 5' long, where the thickness of the wall will admit of that length, shall not have more rise than bed, nor less than $1\frac{1}{2}$ ' width of bed and shall be placed only over a stretcher.

4th. Stretchers will not be less than 20" in width, or more than 8' long, and have at least $\frac{1}{4}$ more bed than rise. Courses 41 shall be not less than 16" nor more — 30" in height. Joints shall be broken at least 12". No course shall have more height than any course underneath. All corners will be run with a $1\frac{1}{2}$ " chisel draft.

Backing shall have good beds and builds, joints and bonds, and be of stone of large size. All joints shall be completely filled with mortar, and, if required, the whole shall be thoroughly grouted. In coursed work the backing will be leveled up with each course.

Footing stone shall be large stone laid as headers, no stone less than 14" thick to be used, 80 per cent. of them shall have at least 12 square feet area. All voids and spaces shall be thoroughly filled with cement mortar and spawls.

Mortar.

Mortar used for all work shall be composed of one part of the best Rosendale cement and two parts of sand by measure.

The sand shall be sharp and clean, free from clay and loam, and not too fine.

The water must be clean and potable.

The cement shall be of first quality Rosendale cement. It shall be furnished in quantities to allow of a thorough test being made. It shall stand a test, after mixing, and being allowed to stand in the air one-half hour, and in water twenty-three and one-half hours, of 70 lbs. per square inch tensile strain, and ground to a fineness that 92 per cent. shall pass through a No. 50 sieve.

Wherever concrete may be called for, it shall be composed of one part mortar, as above specified, and two parts of broken stone.

All new masonry shall be built upon the old foundations now in place and supporting piers under the present bridge.

All outside joints will be raked out to a depth of one inch, and neatly pointed.

The pointing mortar will be mixed one part of sand to one part of Taylor's Portland cement.

Before the footing courses for new piers shall be laid, such 42 portions of the crib-work as may be determined by the bridge commissioners shall be removed and substituted by new material in either timber, concrete, or masonry as may be agreed upon.

All material in old masonry not used in backing in new work shall be used for riprap in the masonry.

Masonry may be laid in freezing weather by using salt water for mixing the mortar.

Dissolve one pound of rock salt in eighteen gallons of water when the temperature is at thirty-two degrees Fahrenheit, and add one ounce of salt for every degree lower in temperature, or enough salt, whatever the temperature may be, to prevent the mortar freezing, and the sand and cement to be warmed before being mixed with water.

No masonry laid in freezing weather to be pointed until spring.

Piles.

Where, in the opinion of the bridge commissioners, or their duly authorized agent, piles are required, they shall be sound, straight, and not less than 6" in diameter at the small end, measured inside the bark. The bark to be removed if necessary. They will be driven to hard bottom in such places and positions as the engineer may direct, and sawed off level at the proper height. All to be properly banded to prevent splitting while being driven, and, when necessary, ends to be shod with wrought or cast iron shoes.

Temporary Bridge.

Before the commencing the tearing away of the present bridge, the contractor must erect, and during his work maintain, a temporary bridge on either the upstream or downstream side of the present structure; said temporary bridge is to have a roadway 16' feet wide in the clear, and one footwalk 5' wide in the clear. The contractor will be required to provide suitable protection between the roadway and sidewalk, and also on the outside of walk.

43 All parts of the present wooden covered bridge—both sub-structure and superstructure—to become the property of the contractor when the temporary bridge is ready for travel.

No work shall be commenced upon any part of the temporary bridge or new structure until detailed plans have been made by the contractor and approved by the bridge commissioners or their duly authorized agent.

All parts of the work to be constructed shall at all times be subject to the inspection of the bridge commissioners, or their duly authorized agents.

The methods of construction of the several parts, dimensions, sections, and details will be fully illustrated and set forth by and upon accompanying plans.

General Requirements and Agreements.

The commissioners shall have the right to order any alterations, additions, or diminutions in the work as it progresses, or to reject any materials or work that may appear to them to be imperfect or damaged, at any time before the final acceptance of the bridge, and to cause the substitution of new and good materials and work therefor; and the contract shall not be vitiated by such acts, but a fair compensation shall be allowed the contractor for extra work due to changes or additions, and a fair deduction will be made for any reduction or diminution of the amount of the materials or work ordered.

All of the work to be done under this contract must be executed by competent and skillful men in its several portions, respectively; and the contractor shall employ a skillful and experienced superintendent or foreman, whose duty shall be to be present upon the work during working hours, to direct the work and the men employed thereon.

The bridge commissioners, or their duly authorized agent, shall have the right to give directions concerning details of the work to the contractor or to any subcontractor, superintendent, foreman or

other person who may appear to the bridge commissioners,
44 or their duly authorized agent, to be in charge of any portion

of the work when the principal contractor is not present, and to order the discharge of any person employed on the work by the contractor, who appears to be incompetent or to act in a disorderly or improper manner; and it is hereby agreed that the above directions and orders of the bridge commissioners or their duly authorized agent shall be promptly followed and executed by the contractor, his agents and employés.

It is hereby specified and agreed that the inspection of the work by any agent of the commissioners during the process of construction shall not relieve the contractor from the full responsibility of doing all portions of the work in a thorough and workmanlike manner; and the contractor hereby warrants all the materials furnished, and work done, to be in accordance with the terms of the specifications forming a part of the contract.

The contractor hereby agrees to repair and make good at his own expense any portion of the work that may have been or become injured or destroyed, before the final completion and acceptance of the bridge, by any accident, or by negligence on the part of any of his employés.

The contractor shall assume all risks of accidents to persons or

property prior to the acceptance of the finished structure by the bridge commissioners or their authorized agent.

The commissioners hereby agree to allow the contractor a sufficient time, beyond the dates named in this contract, for the completion of the work, to make good all work destroyed or damaged by causes beyond his control.

It is hereby agreed that, if at any time before the completion and acceptance of the work the commissioners shall consider the progress of the work to be unnecessarily delayed, or that all the requirements or provisions of this contract have not been fulfilled, or that any part of the work is not properly executed by the contractor in accordance with the terms of the said contract, the said

commissioners shall have the power to notify the said contractor to discontinue all work or any part thereof under this contract, and to designate the part of the work to be discontinued, and the date when the contractor shall cease to carry on the work or part thereof. Upon the receipt of a notification from the commissioners to discontinue the work or any part thereof, the contractor shall thereupon cease to continue the work upon the part or parts designated in the said notification at such time as shall be therein stated, or, if the time shall not be stated, as soon after the receipt of the notification as shall be possible, with due regard to the safety of the part of the work which may have been already commenced and partially completed; and the commissioners shall thereupon have the power, at their discretion, to carry on and complete the remainder of the work in the manner, by contract to another party or by labor hired by the day, that they may deem advisable, and to use such materials as may be found at or in the vicinity of the bridge, or to provide other materials of the kinds and quantities necessary to complete the work in accordance with the terms of this contract; and the cost and expenses of carrying on the work, in the manner designated in this clause, shall be deducted from the balance or amount of money due to the contractor under this contract at the time when he ceased to continue the work. Or, if the said cost and expenses should exceed the said balance, the said contractor is to be held liable to and is to pay the said State of Connecticut the excess or difference between the cost of carrying on the work as above indicated and the said balance due under this contract; but the said excess or difference to be paid by the contractor shall not exceed the amount of the bond given by him for the faithful performance of the contract.

The contractor hereby agrees to give the necessary and proper attention to and supervision of the execution of this contract, either personally or by duly qualified and competent agents. Also, that

he will not sublet any portion of the said work, excepting to
46 parties approved by the bridge commissioners or their duly authorized agent, and who shall agree to conform to and be governed by the terms of this contract.

Moreover, that he will not assign, by power of attorney or otherwise, any portion of the said work, or any of the payments therefor, unless by and with the previous consent of the commissioners.

The contractor further agrees to complete the entire work upon and connected with the bridge as specified herein on or before July 1, 1895.

GEORGE W. FOWLER,
CHARLES W. ROBERTS,
*The Board of Commissioners for Hartford Bridge,
Acting for and in Behalf of the State of Connecticut.*
THE BERLIN IRON BRIDGE COMPANY,
By GEORGE W. SAGE, Secretary.

Witness:-

ARTHUR P. MOORE.
HUGH M. ALCORN.

To the Berlin Iron Bridge Company:

In accordance with the provisions of the contract entered into between you, party of the second part, and the undersigned, the board of commissioners for Hartford bridge, acting for and in behalf of the State of Connecticut, party of the first part, dated November 13, 1894, in relation to alterations, additions, or diminutions in the materials and work thereby contracted for,

You are hereby ordered to substitute in lieu of the plans and specifications for the west abutment and the first, second, and third piers, counting from the west end of the bridge, also in lieu of the plans and specifications for the lift-span, so called, of the bridge, and the first and second spans next east thereof, the accompanying plans and specifications for the west abutment, turn-table pier and first pier east thereof, and for swing-draw span of said bridge, and to furnish materials and perform requisite work upon the
47 above-specified portion of said bridge in accordance with the substituted plans and specifications. And in further accordance with the contract, said party of the first part agrees to pay to said party of the second part over and above the payment required by said contract the sum of fifty-one thousand dollars (\$51,000), payments to be made as provided in said contract, except that the schedule of cost shall be and the same is amended and changed to conform to the changes hereby ordered, and, as amended and changed, shall read as follows, viz:

"Schedule of Cost."

Completion of temporary bridge.....	\$18,000
Removal of old bridge and piers.....	9,000
Completion of west abutment.....	20,000
Completion of turn-table pier.....	51,000
Completion of pier next east of turn-table pier.....	25,000
Completion of each other pier	11,000
Completion of east abutment.....	20,000
Delivery of wood and iron work for draw-span	40,000

Delivery of iron-work for each other span.....	15,000
Completion of draw-span.....	18,000
Completion of each span.....	8,000

Dated at Hartford, this 14th day of January, 1895.

GEORGE W. FOWLER,
CHAS. W. ROBERTS,

*The Board of Commissioners for Hartford Bridge,
Acting for and in Behalf of the State of Connecticut.
THE BERLIN IRON BRIDGE COMPANY,
By CHAS. M. JARVIS, President.*

In presence of—

WILLIAM S. CASE.
HUGH M. ALCORN.

48

HARTFORD, CONN., January 14, 1895.

The foregoing order is this day received and the additional payment therein provided for is assented to and accepted as a fair compensation for extra work due to changes and additions contained in said order.

THE BERLIN IRON BRIDGE CO.,
By CHAS. M. JARVIS, President.

In presence of—

WILLIAM S. CASE.
HUGH M. ALCORN.

Amended Specifications for Steel Highway Bridge Over the Connecticut River Between Hartford and East Hartford, Connecticut, 1895.

Superstructure.

The superstructure will consist, under the amended contract, of four fixed spans, each 158' 4" center to center of end pins, and one swing-span 303' 0" center to center of end pins. The original specifications shall apply to four fixed spans the same as before. The swing-span will be of panel length, width, etc., as shown on plans, and in general will be constructed in the same manner as the fixed spans. The floor of the swing-span, however, shall consist of 4" creosoted North Carolina pine, containing 12 lbs. of creosote oil per cubic foot. This shall be covered with $\frac{1}{2}$ " tongued and grooved pine sheathing, on which sheathing shall be placed asphalt wearing surface.

The roadway and sidewalk of the draw-span to be made in same manner.

49 The turn-table of the draw-span shall be the same as shown on plans, the number of wheels, size, etc., being there indicated.

The draw shall be arranged to work by hand, and shall be provided with proper levers for opening and closing same.

Substructure.

The original specifications for the piers under the fixed spans will not be changed, except that the footing courses for these piers shall be laid on such portion of the present crib-work of the old bridge as may be determined by the bridge commissioners. Such of this crib-work as may be necessary shall be removed, and new material substituted, either timber, concrete, or masonry, as may be agreed upon.

The draw-pier shall rest on a pile foundation thoroughly rip-rapped, and the outside ring shall be of first-class masonry, as noted in the original specifications. The interior or core of this pier may be filled with concrete, or with the same quality of masonry, as specified in the original specifications for backing.

In all other particulars the original specification is to apply to the new work called for under the amended contract the same as for the old work under the original contract.

GEORGE W. FOWLER,
CHAS. W. ROBERTS,

*The Board of Commissioners for Hartford Bridge,
Acting for and in Behalf of the State of Connecticut.*
THE BERLIN IRON BRIDGE COMPANY,

By CHAS. M. JARVIS, President.

In presence of—

WILLIAM S. CASE.
HUGH M. ALCORN.

50 To the Berlin Iron Bridge Company:

In view of the present emergency, occasioned by the destruction of the Hartford bridge, you are hereby requested and required to make immediate provision for public travel across the Connecticut river, under your contract of November 13, 1894, amended January 14, 1895, by the erection of a temporary bridge, as contemplated by said contract.

Hartford, Connecticut, May 18, 1895.

GEORGE W. FOWLER,
CHAS. W. ROBERTS,

*The Board of Commissioners for Hartford Bridge,
Acting for and in Behalf of the State of Connecticut.*

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

51 Superior Court, Hartford County, Dec. 17, 1895.

ARTHUR F. EGGLESTON *ex rel.* }
vs.
S. H. WILLIAMS, Treasurer. }

Motion to Strike Out and Separate Defenses.

In the above-entitled action the plaintiff moves the court to strike out each and all the paragraphs in the defendant's return, because

First. The reasons assigned by the defendant as a defense to the plaintiff's application for a writ of mandamus are all contained and set forth under one defense and are so commingled and confounded with each other that it is impossible for the defendant to ascertain the nature or number of the defenses intended to be assigned by the defendant.

Second. The return of the defendant contains more than one defense and yet all the defenses are alleged and set forth under one defense or heading.

And the plaintiff further moves the court to order the defendant to identify, separate, and number his several defenses in order that the plaintiff may reply thereto.

PLAINTIFF,
By SPERRY, McLEAN & BRAINARD.

Filed December 17, 1895.

First motion was withdrawn at hearing. Second motion denied.
R. WHEELER, J.

January 13, 1896.

Superior Court, Hartford County, Jan. 27, 1896.

ARTHUR F. EGGLESTON *ex Rel.* }
vs.
S. H. WILLIAMS, Treasurer. }

Reply to Defendant's Return.

1. Paragraph 5 is admitted.
2. With regard to paragraph 6, the relators admit the execution of a certain writing purporting to be a contract between
52 the Berlin Iron Bridge Company and certain commissioners named in paragraph 5 of the return, which said pretended or alleged contract is referred to as "Exhibit I" in paragraph 6 of the return; the rest of said paragraph 6 is denied.

3. With regard to paragraph 7, it is admitted that the Berlin Iron Bridge Company constructed a temporary bridge; the rest of said paragraph is denied.

4. It is admitted that the bridge across the Connecticut river at Hartford was totally destroyed by fire on the 17th of May, 1895; the rest of paragraph 8 is denied.

5. Paragraph 9 is admitted except that the relators deny that the contract referred to as "said contract of November 13, 1894, and amended January 14, 1895," was a valid contract or in any way binding upon the State.

6. Paragraph 10 is denied so far as it alleges the performance of a valid contract existing between the State of Connecticut and the Berlin Iron Bridge Company.

7. The relators deny that any valid contract was ever made with the Berlin Iron Bridge Company by authority of chapter 239 of the Public Acts of 1893 as alleged in paragraph 11 of the return; all allegations in said paragraph consistent with this denial are admitted.

8. Paragraphs 12, 13, and 18 are mere statements of legal conclusions, but so far as they may be claimed to be allegations of fact material to the issue they are denied.

9. Paragraph 16 is admitted.

10. Paragraph 17 is admitted so far as it alleges matters of fact.

11. With regard to paragraph 24, the relators admit that the Berlin Iron Bridge Company, in accordance with the provisions of section 3 of said public act, approved May 24, 1895, and within six months after the passage of said act, presented certain claims and demands to the commission provided for by said section and arising under and by virtue of the pretended or alleged contract made a part of the defendant's return and marked "Exhibit I," but 53 the relators deny the allegation that said claim and demand is now pending before said commission as well as the allegation that no decision has been rendered on said claims and demands. And the relators deny that the expense incurred by said commission was in connection with or in preparation for the construction of a permanent bridge.

12. The relators also admit that the Berlin Iron Bridge Company has not yet brought suit for the construction of said alleged contract marked "Exhibit I," or of any contract with said commissioners, and the plaintiff admits that three years have not elapsed since the 24th day of May, 1895. All other allegations in paragraph 24 are denied.

13. (1) The alleged contract between the State of Connecticut and the Berlin Iron Bridge Company, referred to as "Exhibit I," in paragraph 6 of the defendant's return has, since the filing of said return by the defendant, been discharged, canceled, and surrendered to the State of Connecticut by the said The Berlin Iron Bridge Company, and the State of Connecticut has been released and discharged by the said The Berlin Iron Bridge Company from any and all obligations and claims of every name and nature which existed at the time of such release or might thereafter exist under or by virtue of said alleged contract.

(2) Any and all claims and demands alleged and set forth in the defendant's return as existing against the State of Connecticut and in favor of the Berlin Iron Bridge Company or any other person or party arising under and by virtue of any alleged contract or contracts made and executed by the commissioners appointed under

chapter 239 of the Public Acts of 1893, with any party and particularly with the said The Berlin Iron Bridge Company, have, since the filing of the defendant's return by the defendant, been fully heard and determined by the commission appointed under the provisions of said chapter 168 of the Public Acts of 1895, and the decisions and awards of said commission have in all cases been accepted.

(3) Any and all parties, and particularly the Berlin Iron
54 Bridge Company, having any right to present any claim or demand against the State as set forth and alleged in the defendant's return have been fully heard by said commission and their claims and demands have, since the filing of said return, been decided by said commission and the decision and awards of said commission upon said claims and demands have been each and all accepted by the claimants and fully paid and satisfied by the State in strict conformity to the provision of said chapter 168 of the Public Acts of 1895, and proper receipts, releases, and discharges in full satisfaction of said claims, each and all of them have been executed and delivered to the State by each and all of the claimants and particularly by the Berlin Iron Bridge Company.

14. (1) The relators allege and say that the three commissioners appointed as alleged in paragraph 6 of the return had no authority to execute the alleged contract referred to as "Exhibit I" in paragraph 6 of the return, but that the same was *ultra vires* and void for the reason that

(2) Said alleged contract did not provide for the maintenance of the bridge across the Connecticut river at Hartford as it was then constructed and made, but did provide for an entirely different structure in that the bridge then in existence was a wooden bridge twenty-four feet in width of the value of \$30,000, and could have been rebuilt for the sum of \$75,000, whereas the bridge contracted for was a steel bridge thirty-six feet in width to cost \$325,000, as by the terms of said alleged contract it appears.

(3) Said act of 1893, referred to in paragraph 5 of the return did not authorize said commission to build a new bridge or a bridge of the character called for in said alleged contract.

15. Any and all expenses incurred on account of the temporary bridge constructed by the Berlin Iron Bridge Company as set forth in paragraphs 9 and 10 of the defendant's return have, since the filing of the return, been assumed by the relators and the
55 said The Berlin Iron Bridge Company has released and discharged the State from any and all claims and demands on account of the same in accordance with the provisions of section 11 of said chapter 343 of the Special Acts of 1895.

16. The relators demur to paragraph 14 of the defendant's return, because

(1) It does not appear in said paragraph wherein said act, approved May 24, 1895, and said order, dated September 14, 1895, denies to said towns and to the citizens thereof equal rights under the laws of this State.

(2) It does not appear in said paragraph wherein said act and

order takes the property of said towns and of the citizens thereof without just compensation.

(3) The facts as alleged in said paragraph, including the provisions of said act of May 24th and said order of September 14th therein referred to, do not constitute a valid defense or return to this writ of mandamus in that it does not appear by said act of May 24, 1895, and of said order of September 14, 1895, that the provisions of sections 1 and 11 of article 1 of the constitution of the State of Connecticut have been violated as alleged in said paragraph 14 of said return.

(4) By the decree alleged in paragraph 16 of the defendant's return to have been passed by the superior court for Hartford county on the 10th day of June, 1889, and which decree is made a part of the writ of mandamus marked "Exhibit A," it appears that it has been judicially and finally determined and adjudged by the superior court of this State that the town of Glastonbury will be specially benefited by the lay-out and establishment of the said highway described and set forth in said decree and in the return of the defendant.

And it appears in said decree that the damages assessed as benefits which will accrue to the said town of Glastonbury by reason of the lay-out and establishment of said highway as ordered and adjudged by said court are largely in excess of the proportion required of said town of Glastonbury by the said special act of 1895, and by the order of the relators as set forth in said writ of mandamus.

56 17. The relators demur to paragraph 15 of the defendant's return, because

(1) It does not appear in said paragraph wherein the said town of Glastonbury or the citizens thereof have been deprived of their property without due process of law or wherein the said town or the citizens thereof have been denied the equal protection of the law.

(2) The facts alleged in said paragraph, including the sections of the general statutes therein referred to, do not constitute a valid and legal return or defense to this writ of mandamus, in that it does not appear that by said act referred to in said paragraph 15 of the defendant's return the provisions of article 14 of the amendments to the Constitution of the United States has been violated as alleged.

(3) By the decree alleged in paragraph 16 of the defendant's return to have been passed by the superior court for Hartford county on the 10th day of June, 1889, and which decree is made a part of the writ of mandamus marked "Exhibit A," it appears that it has been judicially and finally determined and adjudged by the superior court of this State that the town of Glastonbury will be specially benefited by the lay-out and establishment of the said highway described and set forth in said decree and in the return of the defendant.

And it appears in said decree that the damages assessed as benefits which will accrue to the said town of Glastonbury by reason of the

lay-out and establishment of said highway as ordered and adjudged by said court are largely in excess of the proportion required of said town of Glastonbury by the said special act of 1895, and by the order of the relators as set forth in said writ of mandamus.

18. The plaintiff demurs to paragraph 22 of the defendant's return, because

(1) Under the provisions of the act referred to in said paragraph 22, the parties are properly and lawfully named and designated.

(2) Under the provisions of said act referred to in paragraph 22, this proceeding in mandamus is brought in every respect and requirement according to law and the allegations in said paragraph 22, as based upon the provisions of said special act of 1895, do not constitute a valid and legal return or defense to the writ of mandamus prayed for by the plaintiffs as it appears in the pleadings.

19. The relators demur to paragraph 19 and the paragraph therein referred to, because

(1) It does not appear in said paragraph wherein the provisions of sections 1 and 11 of article 1 of the constitution of the State of Connecticut have been violated.

(2) The facts and allegations as set forth in paragraphs 14, 19, and 21 of the return and the statutes and order therein referred to do not constitute a valid or legal return or defense to the writ of mandamus, in that it does not appear from said facts, allegations, statutes, and order that said towns or the citizens thereof are denied equal rights under the laws of this State or that the property of said town or the citizens thereof is taken without just compensation.

(3) Because by the decree alleged in paragraph 16 of the defendant's return to have been passed by the superior court for Hartford county on the 10th day of June, 1889, and which decree is made a part of the writ of mandamus marked "Exhibit A," it appears that it has been judicially and finally determined and adjudged by the superior court of this State, that the town of Glastonbury will be specially benefited by the lay-out and establishment of the said highway described and set forth in said decree and in the return of the defendant.

And it appears in said decree that the damages assessed as benefits which will accrue to the said town of Glastonbury by reason of the lay-out and establishment of said highway as ordered and ad-

judged by said court are largely in excess of the proportion required of said town of Glastonbury by the said special act of 1895 and by the order of the relators as set forth in said writ of mandamus.

20. The relators demur to paragraph 20 of the return, because

(1) Said paragraph is a mere statement of legal conclusions and is irrelevant.

21. The relators demur to paragraph 21 of the return, because

(1) It does not appear from the allegations in said paragraph or

in the provisions of the acts and matters therein referred to wherein the equal protection of the laws is denied to the defendant or to the town of Glastonbury or the citizens thereof in violation of article 14 of the amendments to the Constitution of the United States.

(2) The facts and allegations as set forth in paragraph 21 and the paragraphs and statutes therein referred to, do not in law constitute a valid and sufficient return or defense to the writ of mandamus in that it does not appear from said facts and allegations that said treasurer, town, or the citizens thereof are denied the equal protection of the laws in violation of article 14 of the amendments to the Constitution of the United States.

(3) Because by the decree alleged, in paragraph 16 of the defendant's return, to have been passed by the superior court for Hartford county on the 10th day of June, 1889, which decree is made a part of the writ of mandamus marked "Exhibit A," it appears that it has been judicially and finally determined and adjudged by the superior court of this State that the town of Glastonbury will be specially benefited by the lay-out and establishment of the said highway described and set forth in said decree and in the return of the defendant.

And it appears in said decree that the damages assessed as benefits which will accrue to the said town of Glastonbury by reason of the lay-out and establishment of said highway as ordered and adjudged by said court are largely in excess of the proportion required of said town of Glastonbury by the said special act of 1895, and by the order of the relators as set forth in said writ of mandamus.

22. The relators demur to paragraph 23 of the return, because

(1) It does not appear in said paragraph that the special act therein referred to is an act in violation of the 14th article of the amendments to the Constitution of the United States in that it does not appear wherein the property of said town of Glastonbury or of the citizens thereof may be taken in violation of article 14 of the amendments to the Constitution of the United States, as claimed in paragraph 15 of the return.

(2) Because by the decree alleged, in paragraph 16 of the defendant's return, to have been passed by the superior court for Hartford county on the 10th day of June, 1889, and which decree is made a part of the writ of mandamus marked "Exhibit A," it appears that it has been judicially and finally determined and adjudged by the superior court of this State that the town of Glastonbury will be specially benefited by the lay-out and establishment of the said highway described and set forth in said decree and in the return of the defendant.

And it appears in said decree that the damages assessed as benefits which will accrue to the said town of Glastonbury by reason of the lay-out and establishment of said highway as ordered and adjudged by said court are largely in excess of the proportion required of

said town of Glastonbury by the said special act of 1895 and by the order of the relators as set forth in said writ of mandamus.

THE RELATORS,
By SPERRY, McLEAN & BRAINARD,
Their Attorneys.

Filed January 29, 1896.

GEORGE A. CONANT,
Assistant Clerk.

Demurrers herein contained sustained *pro forma* April 7, 1896.

60 Superior Court, Hartford County, October Term, 1895.

STATE *ex Rel.* BULKELEY *et al.* }
vs.
WILLIAMS, Treasurer. }

Motion for Judgment.

In the above-entitled action the relators move for judgment for want of rejoinder to reply.

SPERRY, McLEAN & BRAINARD,
Attorneys for Relators,
Per McLEAN.

Filed February 11, 1896.

GEORGE A. CONANT,
Assistant Clerk.

Motion overruled, March 27, 1896.

THAYER, *Judge.*

Superior Court, Hartford County, Feb. 14, 1896.

ARTHUR F. EGGLESTON *ex Rel.* }
vs.
S. H. WILLIAMS, Treasurer. }

Motion to Separate Answers from Demurrers in Relators' Reply.

The respondent represents to the court that the reply of the relators which has been filed in this cause contains various matters of answer, to wit, admissions and denials of certain averments of the respondent's return; and also that the whole of said reply after the 15th paragraph consists of various demurrers to parts of the return, and that said demurrers in law and admissions and denials of fact are contained and connected together in one and the same reply.

This respondent therefore moves the court to order the relators to separate demurrers in law from admissions or denials of the facts, and to state the same in separate pleadings, and that the re-

spondent may have the right to meet matters of fact in one
 61 pleading, and demurrs to matters of law in separate pleadings as required by the practice act and the rules of the court.

DEFENDANT,
 By his attorney, JOHN R. BUCK.

Filed February 13, 1896.

GEORGE A. CONANT,
Assistant Clerk.

Motion overruled, March 27, 1896.

THAYER, *Judge.*

Superior Court, Hartford County, March 27, 1896.

STATE OF CONNECTICUT *ex Rel.* }
 vs. }
 S. H. WILLIAMS, Treasurer. }

Order.

The respondent is ordered to file a rejoinder to the thirteenth, fourteenth, and fifteenth (13th, 14th, and 15th) paragraphs of the relator's reply, within one week from the date of this order.

THAYER, *Judge.*

Filed March 27, 1896.

GEORGE A. CONANT,
Assistant Clerk.

Superior Court, Hartford County, April 2, 1896.

ARTHUR F. EGGLESTON *ex Rel.* }
 vs. }
 S. H. WILLIAMS, Treasurer. }

Respondent's Rejoinder to Reply.

The respondent demurs to so much of the reply as is contained in the 13th, 14th, and 15th paragraphs of the reply and to each and every section of said paragraphs for the following reasons:

62 I. Because the rights of this respondent as they existed under the laws of the State of Connecticut, and of the United States, at the date of the commencement of this action, cannot be altered or varied by any transactions, agreements, or arrangements between the State of Connecticut and the Berlin Iron Bridge Company, since the date of the commencement of this action and of the respondent's return.

II. No averments appear in the first section of paragraph 13 of the reply, which show or tend to show how or in what manner the discharges, releases, surrenders of contract, cancellation of contract in said section described, have either altered or affected the legal

rights of this respondent, as they existed at the commencement of this action.

III. No averments appear in the second section of paragraph 13, which show, or tend to show how or in what manner any decision or award of the commission therein described, or the acceptance of such decision and award by the parties thereto, have any relation to, or alter, or affect the legal rights of this respondent in the present cause as they existed at the date of the commencement of this action, and at the date of the respondent's return thereto; nor is it averred that this respondent was in any manner made a party to the proceedings in said section described, or that he is in any manner bound by the same.

IV. No averments appear in the third section of said paragraph 13, which show or tend to show how or in what manner the payments and satisfaction of certain claims described therein, or receipts, releases, and discharges in satisfaction of said claims, averred to have been executed and delivered to the State by all said claimants, and particularly by the Berlin Iron Bridge Company, have any relation to the rights of this respondent as they existed at the commencement of this action and at the date of the respondent's return thereto. It is not in said section averred that this respondent was a party to any of said transactions, and no averments appear which show or tend to show how or in what manner any of the transactions in said section described have altered, affected, or varied the legal rights as aforesaid of this respondent.

63 V. This respondent has already averred in his return that the act of the General Assembly, approved May 24, 1895, and the special act of said General Assembly, approved June 28, 1895, were in violation of the Constitution of the United States, and of the constitution of the State of Connecticut, and this respondent says that the invalidity of said act is not in law avoided by any payments, releases, discharges, matters of compromise, bargains, arrangements, or transactions of any kind, by or between the State of Connecticut and the Berlin Iron Bridge Company, and nothing appears in said 13th paragraph, or any section thereof, which shows or tends to show how or in what manner the invalidity or unconstitutionality of said act of May 24, 1895, or of said special act of said General Assembly, approved June 28, 1895, has been legally altered, or affected by transactions between the State of Connecticut and the Berlin Iron Bridge Company since the commencement of this action, and since the date of this respondent's return.

VI. This respondent demurs to section 1 of paragraph 14 of the reply, for the reason that said act of the General Assembly of June 29, 1893, and said contract referred to as "Exhibit I," does as matter of law authorize the making and execution of said contract, and the same was not *ultra vires*.

VII. The respondent demurs to the 2d section of paragraph 14, because it appears that said contract does provide in substance for the maintenance across the Connecticut river of the same bridge and highway, and that the purpose of the contract was to maintain

and establish the same bridge and highway across the Connecticut river as had been theretofore maintained. No averments appear in said section which tend to show that the commissioners of the State of Connecticut had not legal authority to build a steel bridge in the place of a wooden bridge, or to build a bridge 36 feet wide in place of a bridge 24 feet wide. There are no averments in this section which tend to show what is the amount of public travel existing at the present time, nor that the bridge contracted for by the

State commissioners was of dimensions, or cost, exceeding
64 the legitimate demands of the public or the objects and purposes of said chapter 139 of the Public Acts of 1893 under which act said bridge and highway were to be maintained by and at the expense of the State of Connecticut.

VIII. The respondent demurs to section 3 of paragraph 14, because said act of 1893 did authorize said commission to build a new bridge of the character called for in said contract.

IX. The respondent demurs to paragraph 15 of the reply, because the legal rights of this respondent as they existed at the date of the commencement of this action cannot be affected by the fact, that the relators since the filing of the return have assumed expenses of a temporary bridge, or that the Berlin Iron Bridge Company has released and discharged the State from all claims and demands on account of the same. This respondent has already averred in his return that said special act, approved June 28, 1895, was and is void, and in violation of the Constitution of the United States, and of the State of Connecticut, and no averments appear in said paragraph 15, which show or tend to show, how the alleged invalidity of said special act has been legally altered, or varied by the releases and discharges in said paragraph 15 set forth.

X. The respondent further demurs to paragraph 15 because no act on the part of the relators, in assuming expenses of a temporary bridge, or of the Berlin Iron Bridge Company in releasing the State from obligations in regard to the same or from claims or demands arising out of the contract between said company and the State, nor any proceeding of the relators, since the commencement of this action and the filing of the return, alleged to be under the special act approved June 28, 1895, can in any way legally determine or affect the validity or constitutionality of said act.

DEFENDANT,
By his attorney, JOHN R. BUCK.

Filed April 2, 1896.

GEORGE A. CONANT,
Assistant Clerk.

Within demurrers overruled *pro forma*, April 7, 1896.

65 Superior Court, Hartford County, April 10, 1896.

ARTHUR F. EGGLESTON *ex Rel.* }
vs.
S. H. WILLIAMS, Treasurer. }

Answer to Part of Relator's Reply.

1. Paragraphs 13 and 15 of the relator's reply are admitted.
2. Sections 1 and 3 of paragraph 14, of the relator's reply are denied. Section 2 of paragraph 14 is admitted.

RESPONDENT,
By his attorney, JOHN R. BUCK

Filed April 10, 1896.

GEO. A. CONANT,
Assistant Clerk.

Superior Court, Hartford County, April 10, 1896.

ARTHUR F. EGGLESTON *ex Rel.*, etc., }
vs.
S. H. WILLIAMS, Treasurer of the Town of Glastonbury. }

Judgment File.

This proceeding by application for a writ of mandamus came to this court at a session thereof, held October 16, 1895, when an alternative writ issued commanding the respondent to obey and conform to the order set out in said application, or show cause to the contrary as on file; whereupon the respondent made return to the October term of 1895, of this court, to wit, on the 25th day of November, A. D. 1895, showing reasons why a peremptory writ should not issue, when the parties appeared and were at issue as on file.

This court having heard the parties upon the issues of fact and law as they appear from the pleadings in the foregoing record, and from the finding of facts as agreed by the parties, sustains the 66 demurrers filed by the relators, overrules the demurrers filed by the respondent, and finds the issues in favor of the relators, and that said return is insufficient, and that the allegations of the application are true, except as modified by the subsequent pleadings, and by said finding of facts, as on file.

Whereupon it is adjudged, *pro forma*, that the applicants recover of the respondent their costs taxed at — dollars, and that a peremptory writ of mandamus do issue, commanding him forthwith on service thereof to pay to the relators, being "The Commissioners for the Connecticut River Bridge and Highway District," the sum of fifteen dollars, in accordance with the order and requisition of said commissioners made on the 14th day of September, 1895, and presented to the town of Glastonbury, and to its treasurer, on the 21st day of

September, 1895, in the manner and form as said order directs, and that the respondent obey and conform in all respects to said order.

ROBINSON, *Judge.*

Superior Court, Hartford County, April 10, 1896.

ARTHUR F. EGGLESTON *ex Rel.*, etc., }
vs. }

S. H. WILLIAMS, Treasurer of the Town of Glastonbury. }

Notice is hereby given of an appeal by the respondent from the judgment of the court in the above-entitled cause to the next term of the supreme court of errors, in and for the first judicial district, to wit: to the term thereof to be holden at Hartford on the first Tuesday of May, 1896.

RESPONDENT,
By his attorney, JOHN R. BUCK.

Filed April 10, 1896.

GEO. A. CONANT,
Assistant Clerk.

67 Superior Court, Hartford County, April 16, 1896.

ARTHUR F. EGGLESTON *ex Rel.*, etc., }
vs. }

S. H. WILLIAMS, Treasurer of the Town of Glastonbury. }

Agreement as to Finding of Facts.

The respective parties in the above-entitled case agree that the following modifications of the allegations of facts and denials shall be made a part of the record, together with and in addition to the facts as they appear from the pleadings.

1. In relation to paragraph six of the return it is admitted that the bridge was out of repair and unsafe for public travel in its then condition, and that said commissioners, under the law of 1892, acted in good faith in the making of said alleged contract.

2. As to paragraph seven, it is admitted that the Berlin Iron Bridge Company incurred expenses in the preparations of plans, services of the agents and employés of said company, in contemplation of the construction of said permanent bridge, under said contract amounting to five thousand seven hundred and seventy-six dollars (\$5,776); said paragraph to be admitted with said modification.

3. It is agreed that paragraph eight shall be amended so as to read as follows:

"On May 17, 1895, while said alleged contract existed, the bridge over said river which connected the towns of Hartford and East Hartford, and which the new bridge provided for by said contract was intended to take the place of, was totally destroyed by fire."

And said paragraph so amended to be admitted.

4. As to so much of paragraph twenty-four of the relators' reply as denies that the sum of money for which the present suit is brought, was expended in construction of a permanent bridge across said river, it is agreed that the said sum of fifteen dollars (\$15) which the defendant refused to pay upon the requisition of the relator, was

68 a part of a sum of money expended east of said river, and wholly in connection with the causeway which, together with the bridge that formerly existed between the towns of Hartford and East Hartford, formed the highway between the towns of Hartford and East Hartford.

5. That a portion of the temporary bridge provided for by said alleged contract, being several rods in length, and extending from the east bank of the Connecticut river, was constructed by said Berlin Iron Bridge Company prior to February 1, 1895, and said company had, up to that date, expended the sum of \$600 in labor on said temporary bridge, and had also purchased material for said temporary bridge to the amount of about \$8,000. After the notice set forth in paragraph nine of the respondent's return, said company completed the temporary bridge, and afterwards, on December 13, 1895, the relator paid to said company for said temporary bridge the amount and price of \$18,000.

6. That the Berlin Iron Bridge Company had a claim and made a demand against the State of Connecticut arising under the contract of November 13, 1894, amounting in the aggregate to the sum of \$72,071, and said company presented said claim and demand to Hon. Dwight Loomis, George W. Hodge, and B. P. Mead, the commissioners appointed under section 3, chapter 168 of the Public Acts of 1895, which commission afterward, on December 7, 1895, awarded to said company the sum of \$27,526 upon said claim and demand.

7. That the State of Connecticut paid to the Berlin Iron Bridge Company for the cancellation of the alleged contract, dated the 13th day of November, 1894, and for the release of all claims under and by virtue of said contract the sum of \$27,526, and surrendered said contract to the State, and gave a written release forever discharging the State of Connecticut from all obligations under the same. A copy of said award is attached to this finding and marked "Exhibit 9." A copy of the vote of the Berlin Iron Bridge Company, authorizing its president to accept said award, and give proper 69 release and discharge to the State of Connecticut, is annexed to this finding and marked "Exhibit 10." A copy of the release and discharge, given by the Berlin Iron Bridge Company to the State of Connecticut, is attached to this finding and marked "Exhibit 10."

8. The act of June 28, 1895, being an act entitled An act creating the Connecticut River bridge and highway district (Private Acts, chapter 343), is hereto attached and marked "Exhibit B."

9. On May 24, 1895, the legislature passed an act entitled An act concerning the Hartford bridge, chapter 168, a copy of which is attached to this finding and marked "Exhibit 8."

10. The respondents admit the existence of a certain decree of the superior court of Hartford county, passed on the 10th of June, 1889, as alleged in paragraph 2 of the complaint, but they do not admit the admissibility of the same as evidence, or any of the conclusions set up in said paragraph. Said decree grew out of proceedings brought under the provisions of "An act to establish free public highways across the Connecticut river," being chapter 126 of the Public Acts of the year 1887, which said act is hereto annexed and marked "Exhibit X."

RELATORS,

By their attorneys, SPERRY, McLEAN & BRAINARD.

RESPONDENT,

By his attorney, JOHN R. BUCK.

In pursuance of the preceding agreement, the court finds the facts therein stated to be the facts in this case.

ROBINSON, Judge.

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

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"EXHIBIT 9."

(Annexed to finding.)

Award of Commissioners to the Berlin Iron Bridge Company.

The undersigned, a commission appointed under section 3, chapter 168 of the Public Acts of 1895, to hear and determine all legal claims and demands not to exceed forty thousand dollars (\$40,000), presented to us within six months from and after the passage of said act, and arising under or by virtue of any contract made and executed by the commissioner appointed under chapter 239 of the Public Acts of 1893, with any party, particularly with the Berlin Iron Bridge Company of Berlin, Connecticut, having had presented to us, within the time limited by said act, the claim of said bridge company, which claim, by reference made part of this finding marked "A," having met said bridge company with its witnesses and counsel, and the State of Connecticut represented by its counsel, pursuant to previous agreement, at the supreme court room in the capitol at Hartford, on the 26th and 29th days of November, and the 7th day of December, A. D. 1895, and having fully heard and considered the evidence and arguments then and there offered, we find that the said Berlin Iron Bridge Company has a legal claim and demand against the State of Connecticut, arising under and by virtue of a contract dated the 13th day of November, A. D. 1894, made and duly executed by the commissioners appointed under said act of 1893, with said Berlin Iron Bridge Company, amounting in the aggregate to the sum of twenty-seven thousand, five hundred and twenty-six dollars (\$27,526), and we do hereby award and determine that the State of Connecticut pay to said Berlin Iron

71 Bridge Company, on demand, the sum of twenty-seven thousand, five hundred and twenty-six dollars (\$27,526), which is to be in full of all said claims and demands marked "A."

Dated at Hartford, Connecticut, December 7, A. D. 1895.

DWIGHT LOOMIS.

GEORGE W. HODGE.

BENJ. P. MEAD.

COMPTROLLER'S OFFICE,

HARTFORD, April 4, 1896.

I hereby certify that the above is a correct copy of the original on file in this office.

E. W. MOORE,

For Comptroller.

Filed April 16, 1896.

GEORGE A. CONANT,

Assistant Clerk.

"EXHIBIT 10."

(Annexed to finding.)

Vote of Directors of the Berlin Iron Bridge Company Accepting Award of Commissioners.

Voted: That this company hereby accepts the award of \$27,526, made by the commission appointed to pass upon the claims of this company by chapter 168 of the Public Acts of 1895, in full of all claims and demands which this company now has against the State of Connecticut on account of the contract made by this company to construct a bridge across the Connecticut river at Hartford; and Chas. M. Jarvis of this company is hereby authorized to surrender the said contract to the State of Connecticut and to sign all necessary receipts, releases, and discharges necessary to carry this vote into effect.

I hereby certify that the foregoing is a true copy of the vote passed by the board of directors of the Berlin Iron Bridge
72 Company at a meeting legally called and held for that purpose on the 13th day of December, 1895.

Attest:

GEO. H. SAGE, *Secretary.*

STATE OF CONNECTICUT, }
Comptroller's Office. }

HARTFORD, CONN., April 4, 1896.

I hereby certify that the above and foregoing is a correct copy of the original on file in this office.

E. W. MOORE,

For Comptroller.

Filed April 16, 1896.

GEORGE A. CONANT,

Assistant Clerk.

"EXHIBIT 11."

(Annexed to finding.)

Release of the Berlin Iron Bridge Company to the State of Connecticut.

\$27,526.

HARTFORD, CONN., December 13, 1895.

Received of the State of Connecticut the sum of twenty-seven thousand, five hundred and twenty-six dollars, in full of award made on the 7th day of December, 1895, by Hon. Dwight Loomis, Hon. Benj. P. Mead, comptroller, and Hon. George W. Hodge, treasurer of the State of Connecticut, acting as a commission constituted by chapter 168 of the Public Acts of 1895, and all other claims presented by this company to said commission are hereby withdrawn, and this payment is received in full satisfaction and discharge of all claims and demands of every nature which this company has or ought to have, arising under or by virtue of any contract made and executed by the commission appointed under chapter 239 of
 73 the Public Acts of 1893 with this company, and the within contract is hereby surrendered to the State of Connecticut.

THE BERLIN IRON BRIDGE COMPANY,
 By CHARLES W. JARVIS, *Pres't.*

STATE OF CONNECTICUT, }
Comptroller's Office. }

HARTFORD, CONN., April 8, 1896.

I certify that the foregoing is a true and correct copy of the original voucher on file in this office.

JOHN H. WADHAMS,
Assistant Clerk.

[SEAL.]

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

EXHIBIT "B."

(Annexed to finding.)

CHAPTER CCCXLIII.

Creating the Connecticut River Bridge and Highway District.

Resolved by this assembly:

SECTION 1. That the towns of Hartford, East Hartford, Glastonbury, Manchester, and South Windsor be, and they are hereby created a body politic and corporate, with power to sue and be sued, under the name of the Connecticut River bridge and highway district, for the construction, reconstruction, care, and maintenance of a free public highway across the Connecticut river at Hartford and the causeway and approaches appertaining thereto, as described in

a decree of the superior court of Hartford county, passed on the tenth day of June, 1889, in which decree said highway was laid out and established.

74 SEC. 2. Morgan G. Bulkeley, Meigs H. Whaples, John G. Root, and John H. Hall of Hartford, James W. Cheney of Manchester, Alembert O. Crosby of Glastonbury, John A. Stoughton of East Hartford, and Lewis Sperry of South Windsor are hereby appointed commissioners for said district with authority to maintain said free public highway, and whenever public safety or convenience may require, to erect new bridges along or upon said highway, to reconstruct, raise, and widen the causeway and approaches appurtenant to or a part of said highway, at the expense of the towns named in section one of this act and composing said bridge district, at a cost not exceeding five hundred thousand dollars. Said board of commissioners shall organize by the choice of a president, secretary, and treasurer, and shall by lot divide themselves into three classes; the term of office of the first class shall expire on the first day of July, 1898, of the second class July first, 1899, of the third class July first, 1900. Said board shall have authority to employ such other officers, engineers, and agents as may be found necessary for the transaction of its business. Whenever a vacancy occurs in said board by death, resignation, refusal to serve, or expiration of term of office, such vacancy shall be filled by the town in which such retiring member resides at an annual or special town meeting. No member of said commission shall receive any compensation except actual expenses incurred in the performance of his duties.

SEC. 3. Any damages resulting from the defective condition of said highways or the bridges upon the same shall be paid by said board as a part of cost of maintenance. Actions may be brought against said board by service upon its secretary and any judgment recovered therein shall be paid by said board in the same manner as herein provided for the payment of the expenses of repairs and maintenance. Said board shall annually report to said several towns the expenses incurred and paid by them during the preceding year.

75 SEC. 4. For the purpose of providing means for the construction of a new bridge or bridges along said highway, or for the permanent improvement of said causeway or approaches by widening or raising the same, the said board of commissioners is hereby authorized to issue the bonds of said district to an amount not exceeding five hundred thousand dollars to run for not exceeding fifty years, and bearing a rate of interest to be determined by said commissioners, payable semi-annually; provided, that not less than ten thousand dollars of said bonds shall be made due and payable each and every year from the date of issue. Said bonds shall not be sold at less than par, and shall be exempt from taxation. They shall be signed by the president of said board and countersigned by both the secretary and treasurer. To provide for the payment of said bonds as they mature, and interest upon the same, the several towns named in the first section of this act shall

annually, on or before the fifteenth day of July of each year, until all above-described bonds have matured or been paid, pay over to the treasurer of said bridge commission, on his written order, a sum equal to twenty-five cents on each one thousand dollars of the grand list of such town until the proportionate cost to each of said towns as hereinafter provided has been fully paid in the following proportions, that is to say: the town of Hartford shall pay seventy-nine one-hundredths; East Hartford, twelve one-hundredths; Glastonbury, three one-hundredths; Manchester, three one-hundredths; and South Windsor, three one-hundredths of the cost thereof; and for the ordinary support and maintenance of said highway said towns shall from time to time, upon the order of said commissioners, pay such further sums as said commissioners may determine as the proportion of said towns under the provisions of this resolution, and said towns are hereby authorized and directed to provide for such payments in the annual tax levy of said towns.

SEC. 5. Fifty per centum of all taxes paid to the State by all street railway companies using any bridge crossing said river between said towns either directly or by virtue of any traffic or
76 other arrangement for the next five years, and thereafter ten per centum, shall annually be paid by the treasurer of the State, upon the order of the comptroller, to the treasurer of said commission. When any work on said highway, bridges, or approaches to an amount exceeding five thousand dollars shall be contemplated, the commissioners shall advertise for bids for the same, under such regulations as they may prescribe.

SEC. 6. In order to provide for the accommodation and use of street railways now or heretofore operating their roads over said free public highway, said commissioners are directed, in constructing a new bridge or bridges or widening or raising said causeway, to provide the necessary accommodation for such railways upon such terms as to participation in cost of construction or for maintenance as may be agreed upon between said street railway companies and said board of commissioners. The provisions of this section shall not be so construed as to interfere with or infringe upon any rights heretofore acquired by the Hartford Street Railway Company under its charter or in any other legal manner to use said highway for street railway purposes nor to relieve said company from the payment of its proportionate cost of construction and maintenance as is herein provided, and upon payment of such proportionate cost of construction and maintenance, or upon said company's becoming obligated to pay the same in such manner as may be agreed upon between said company and said commissioners or as may be ordered by the railroad commissioners as hereinafter provided, the said The Hartford Street Railway Company shall continue to have the right, subject to the control and direction of the commissioners having charge of said highway as hereinafter provided, to lay its tracks, construct and operate its street railway upon and over said highway, but the location and construction of its tracks, wires, conductors, fixtures, and all its structures shall be subject to the control and direction of said bridge commis-

sioners, and the same may be placed, located, and constructed, replaced, relocated, and reconstructed from time to time in such manner as the said commissioners may approve, and except as above provided, all the provisions of law applicable to the use of highways by street railway companies shall apply to the use of said highway by said company, except that in respect thereto the said bridge commissioners shall be substituted for and shall in all respects take the place of the selectmen of a town as is now provided by law in the case of an ordinary highway. Whatever necessary expense has been or may be incurred by said company for the safety or accommodation of public travel over said highway from the date of the approval of an act entitled An act concerning the Hartford bridge, approved May 24, 1895, until the commissioners herein appointed shall assume control of said highway under the provisions of this act shall be adjusted and paid by said commissioners to said company as a part of the cost of maintenance of said highway, and in case the said commissioners and said company fail to agree as to said amount or as to the proportionate cost of construction or maintenance as is hereinbefore provided, the same shall be determined by the board of railroad commissioners, who are authorized and directed, upon the application of either of said parties and upon reasonable notice to the other, to hear and determine said questions, or any of them, and their decision shall be final and conclusive.

SEC. 7. Said commissioners are empowered to make any and all orders and to do all things necessary for the construction, reconstruction, and improvement of said highway, and the causeway and approaches appurtenant thereto, including all bridges necessary for the safety and convenience of public travel. The orders of said commissioners shall be obligatory upon the several towns named in section one of this act, and such orders shall be sufficient authority for the treasurer of each of said towns to pay to said commission or its treasurer any sum required to be paid by the towns named in such order. Said commissioners are authorized to apply to any court of competent jurisdiction, whether of State or the United States, for and in any matter appertaining to said work, and to procure the enforcement and execution of their orders, and the courts of this State are hereby fully empowered, upon proper proceedings brought by or at the instance of said commissioners or any interested party, to enforce by mandamus or otherwise the orders of said commissioners made under authority of this resolution.

SEC. 8. In the event that any commissioner named in this resolution shall refuse or neglect to act, the selectmen of the town in which such person resides shall appoint some person to act in his stead, until such vacancy has been filled by said town at an annual or a special town meeting called for that purpose; but until such vacancy is filled the remaining commissioners shall constitute such board, and any orders made by a majority of them shall be the orders of said board of commissioners and binding as such; nor shall the failure of any of the commissioners named in this resolu-

tion, or of any persons hereafter appointed, to act, in any way, affect the powers of said board or proceedings under this resolution.

SEC. 9. The commissioners appointed under chapter CCXXXIX of the Public Acts of 1893 are hereby authorized and directed to turn over to the board of commissioners herein appointed, immediately on the organization of said board, all the property, of every name and nature in their hands or under their control, under the act of 1893, heretofore referred to, including all books, papers, and contracts.

SEC. 10. Any town named in this resolution as a part of the district herein created may acquire and succeed to all the rights acquired by any other town or towns under the provisions of this resolution, or chapter CXXVI of the Public Acts of 1887, approved May 19, 1887, and may assume all duties, obligations, and payments imposed upon such other town or towns by a majority vote of any special town meeting called for that purpose, upon such terms as may be agreed upon by such towns; and if any town shall vote to acquire the rights and assume the duties, obligations, and payments imposed upon any other town or towns, such other town or towns may surrender such rights and transfer such duties, obliga-

79 tions, and payments to the town agreeing to assume the same by a majority vote of the electors present at a special town meeting called for that purpose. Whenever such rights as aforesaid have been acquired by another town, and the duties, obligations, and payments provided in this resolution for such town have been assumed by another town, the term of office of the commissioner residing in said town shall at once expire, and the right of such town to appoint his successor shall cease and thereafter devolve upon the town acquiring said rights and assuming such duties, obligations, and payments. Within twenty days after the passage of this resolution it shall be the duty of the selectmen of the town of Hartford to call a special town meeting to consider a proposition to acquire the rights of the towns of Manchester, Glastonbury, and South Windsor, and to assume the duties, obligations, and payments imposed upon the towns named, or either of them, under the provisions of this act, or chapter CXXVI of the Public Acts of 1887.

SEC. 11. The board of commissioners appointed under this resolution shall have authority to assume the cost of construction of the temporary bridge now being erected over the Connecticut river as a part of said highway; and in case said board shall assume the cost of construction as aforesaid, the comptroller shall turn over any and all moneys received for insurance on account of the destruction of any portion of said highway by fire. Said board of commissioners is hereby authorized to locate the western terminus of the bridge over the Connecticut river at a point at or near the corner of Morgan and Market streets, and the eastern terminus at such a point upon the causeway, as said board may determine, for the purpose of rendering said bridge at all times available for public travel; and the common council of the city of Hartford is hereby authorized to grant the right of way through or over Morgan street in said city; and said board of commissioners is further authorized to negotiate and

agree with the New York, New Haven & Hartford Railroad Company for such changes or alterations in its tracks as now
 80 located as may be found necessary, upon such terms as it may deem equitable.

SEC. 12. So much of section two of an act concerning the Hartford bridge, approved May 24, 1895, as fixes the proportions of cost of construction and maintenance to be paid by said several towns, is hereby expressly repealed, and the provisions of this resolution shall operate as an amendment to said act, in respect to the proportions of said cost of construction and maintenance; but nothing in this resolution shall be construed as interfering with the rights of any person or persons under the act approved May 24, 1895.

SEC. 13. Any acts or parts of acts inconsistent with this resolution are hereby repealed.

Approved, June 28, 1895.

STATE OF CONNECTICUT, OFFICE OF THE SECRETARY.

I, William C. Mowry, secretary of the State of Connecticut, and keeper of the seal thereof, and of the original record of the acts and resolutions of the General Assembly of said State, do hereby certify that I have compared the annexed copy of the resolution creating the Connecticut River bridge and highway district with the original record of the same now remaining in this office, and have found the said copy to be a correct and complete transcript thereof.

And I further certify, that the said original record is a public record of the State of Connecticut, now remaining in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said State, at Hartford, this 28th day of June, 1895.

[L. S.]

WILLIAM C. MOWRY, *Secretary.*

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

81

“EXHIBIT 8.”

(Annexed to finding.)

CHAPTER CLXVIII.

An Act Concerning the Hartford Bridge.

Be it enacted by the senate and house of representatives in General Assembly convened:

SECTION 1. Chapter CCXXXIX of the Public Acts of 1893 is hereby repealed.

SEC. 2. From and after the passage of this act, the towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester shall, except as hereinafter provided, maintain the highway across the Connecticut river, where the bridge formerly conducted by the Hartford Bridge Company as a toll-bridge now is, and across said bridge, and across and along the causeways and approaches ap-

purtenant to and connected therewith, and the expense of such maintenance shall be paid by said towns in proportion to the assessment made upon said towns by the superior court in the proceedings in which said highway was laid out and established; that is to say: Hartford, ninety-five two-hundred-and-tenths; East Hartford, sixty-six two-hundred-and-tenths; Glastonbury, twenty-five two-hundred-and-tenths; South Windsor, twelve two-hundred-and-tenths; Manchester, twelve two-hundred-and-tenths. Except as hereinafter provided, whenever it shall be necessary to erect any new bridge or bridges along or upon or for said highway so laid out and established, as aforesaid, the same shall be erected and built and thereafter maintained and kept in repair by said towns at an expense to be borne by them in the same proportion among themselves, as aforesaid. Fifty per centum of all taxes paid to the State by all street railway companies using any bridge crossing said river between said towns, for the next five years, and thereafter ten per centum shall annually be paid by the treasurer of the State
82 upon the order of the comptroller to the treasurers of said towns, in proportion to said assessments made upon said towns respectively, as aforesaid.

SEC. 3. Hon. Dwight Loomis of Hartford and the comptroller and treasurer of the State are hereby constituted a commission to hear and determine all legal claims and demands, not to exceed forty thousand dollars, presented to them within six months from and after the passage of this act, arising under or by virtue of any contract made and executed by the commissioners appointed under chapter CCXXXIX of the Public Acts of 1893, with any party, particularly with the Berlin Iron Bridge Company of Berlin, Connecticut. In case said commission shall decide that any party or parties, particularly the Berlin Iron Bridge Company, have any legal claims or demands against the State, not exceeding in the aggregate said sum of forty thousand dollars, they shall file their decision, in writing, in the office of the comptroller, and thereupon said comptroller is authorized to draw his order or orders upon the treasurer of the State for such sum or sums as may be fixed and agreed upon by said commission as being due to any such party or parties, and said order or orders shall be paid from the State treasury upon proper receipts, releases, and discharges being executed and delivered to the State.

SEC. 4. If any such party or parties, particularly the Berlin Iron Bridge Company, shall not be satisfied with the decision of said commission, permission and authority is hereby given to such party or parties, particularly the said The Berlin Iron Bridge Company, at any time within three years from and after the passage of this act, to commence and prosecute a suit or suits against the State of Connecticut, in the superior court for Hartford county, for any legal claim, debt, or demand arising under or by virtue of any valid contract made and executed by said commission under and by the provisions of said public act of 1893, acting within the legal scope of their authority, with any party, and particularly with the said The

83 Berlin Iron Bridge Company, or for the construction of any contract with said commissioners alleged by such plaintiff to be valid and binding upon the State of Connecticut, according to the ordinary procedure in civil actions in the State; and in any event, whether said contract shall be held valid or not, said The Berlin Iron Bridge Company shall be entitled to recover for all material furnished, and all expenses of every kind actually incurred under, in relation to, or in connection with said contract, including therein all legal and personal expenses.

SEC. 5. Said suit or suits shall be commenced by complaint as by law prescribed in civil actions, and service of said process shall be made by any proper officer by leaving a true and attested copy of the same with the comptroller of the State, or at his office in the city and county of Hartford, at least twelve days before the return day of the same.

SEC. 6. The comptroller is hereby directed to appear and defend in the name of the State in any such suit or suits, and to employ counsel to conduct such defenses, and fully to protect and defend the interests and rights of the State therein.

SEC. 7. If any final judgment or judgments shall be rendered in any such suit or suits against the State, then the comptroller shall draw his order or orders for the same on the treasurer of this State, by whom such order or orders shall be paid from the treasury of the State.

SEC. 8. If any contract for the building of a bridge over the Connecticut river, between the towns of Hartford and East Hartford, alleged to have been made by said commissioners with the Berlin Iron Bridge Company, shall be declared valid and binding, upon any complaint brought for its construction as hereinbefore provided, then the comptroller is authorized and directed to carry out and complete said contract, according to the provisions thereof, and to employ a competent engineer to supervise the construction of such bridge, and to draw his order or orders upon the State treasurer for the same and for said cost of supervision; but nothing in this act shall be construed as relieving the said towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester, upon the passage of this act, from the duty of maintaining and 84 repairing the present and all other necessary bridges, causeways, and appurtenances, across said river, between said towns, or rebuilding, whenever necessary, such new bridge as may, under the provisions of this section, be erected by the State. In case such new bridge shall be constructed at the expense of the State, as provided for in this section, the provision for the payment to said towns of fifty per cent. of the taxes from street railway companies using such new bridge annually for five years, shall not take effect, but ten per cent. of all such taxes shall annually be paid by the treasurer of the State, upon the order of the comptroller, to the treasurer of said towns, in proportion to the assessments made upon said towns, respectively, as aforesaid.

SEC. 9. This act shall take effect from its passage.

Approved May 24, 1895.

STATE OF CONNECTICUT, OFFICE OF THE SECRETARY.

I, William C. Mowry, secretary of the State of Connecticut, and keeper of the seal thereof, and of the original records of the acts and resolutions of the General Assembly of said State, do hereby certify that I have compared the annexed An act concerning the Hartford bridge with the original record of the same now remaining in this office, and have found the said copy to be a correct and complete transcript thereof.

And I further certify that the said original record is a *a* public record of the State of Connecticut, now remaining in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said State, at Hartford, this 28th day of June, 1895.

[SEAL.]

WILLIAM C. MOWRY, *Secretary.*

Filed April 16, 1896.

GEORGE A. CONANT,

Assistant Clerk.

85

EXHIBIT "X."

(Annexed to finding.)

CHAPTER CXXVI.

*An Act to Establish Free Public Highways Across the Connecticut River in Hartford County.**

Be it enacted by the senate and house of representatives in General Assembly convened:

SECTION 1. The State's attorney for the county of Hartford is hereby authorized and directed to forthwith bring a complaint in the name of the State to the superior court for said county against the corporations owning toll-bridges across the Connecticut river in said county, for the purpose of carrying out the objects and provisions of this act. Said complaint shall be served upon said corporations by some proper officer leaving a true and attested copy thereof with the secretary of each of said corporations at least twelve days before the return day of said complaint. In case either of said corporations shall have no secretary within this State, service may be made upon any person having charge of the bridge of such corporation. Notice of the pendency of said complaint shall be given to all towns interested therein, by the publication of an order of notice issued and signed by a judge of said court or by the clerk thereof, in two daily newspapers published in Hartford for six days consecutively at least twelve days before the return day of said complaint, and by such other notice as said court shall order, and any such town may appear and be made a party to said complaint at any time within thirty days from the return day thereof or within such further time as said court shall order. Said court shall

*Amended by senate joint resolution, No. 157 (Special Laws, No. 310).

86 have full power to make any order or decree necessary or expedient to carry out the object and provisions of this act, and in addition to the powers herein specially conferred shall have in respect to said proceeding such other powers as said court has in respect to civil actions pending therein.

SEC. 2. Upon said complaint said court shall appoint three commissioners, who, first being sworn, shall lay out and establish highways across the Connecticut river where the toll-bridges in said county now are, and across said bridges and across and along the causeways and approaches appurtenant to and connected therewith. Said court may, in its discretion, appoint three commissioners for each or any of said highways so to be laid out, who shall appraise the damages in the cases of said highways respectively, but all of said commissioners so appointed shall act as a joint commission in assessing the benefits, as hereinafter provided. Said highways when laid out and established as herein provided shall be free public highways.

SEC. 3. Said commissioners, after such notice as said court shall prescribe to the towns which they shall deem interested, shall estimate and assess the damages caused by the lay-out and establishment of such free highways, and shall estimate and assess said damages upon the several towns which they shall find will be specially benefited by the lay-out and establishment of said highways as benefits accruing to said several towns, in such proportion as said commissioners shall find to be equitable. In laying out said highways and assessing said damages, said commissioners shall include the damages to the franchise and to any other property of any corporation whose property shall be taken by the lay-out of said highways.

SEC. 4. Said commissioners shall report to said court, in writing, their doings, stating particularly the lay-out of said highways, the amount of damages assessed against each person or corporation, and the benefits assessed to each town. Any party interested in said report may remonstrate against the acceptance of the same for

87 any irregularity or improper conduct on the part of said commissioners, and said court, in case of such irregularity or improper conduct, may order a rehearing before said commissioners, or may appoint three other commissioners in the same manner and with the same powers and duties as provided in section three of this act. But if said court shall accept said report or such other report as said commissioners shall make or as said other commissioners shall make, such accepted report shall be final and conclusive as to all matters therein contained, and said court shall render judgment thereon against said several towns for the amount assessed against them respectively, and the clerk of said court shall forthwith notify each of said towns of the judgment against it, by mailing to the clerk thereof a notice specifying the date and amount of such judgment.

SEC. 5. Said towns so assessed shall, within three months from the rendition of said judgment, deposit with the treasurer of this State the sums so severally assessed against them, and at the expi-

ration of said three months the comptroller shall draw his order on the treasurer in favor of the several persons or corporations in whose favor damages have been assessed for the amount of damages so assessed respectively, and said treasurer shall hold the amount thereof for the benefit and subject to the order of the several parties in whose favor said orders were drawn, and shall notify said several parties that he so holds said amounts, and thereupon said highways so laid out as aforesaid shall become and remain public highways. In case any town shall fail to pay the judgment rendered against it as aforesaid, within the time aforesaid, said court shall order execution upon said judgment to be issued against said town in favor of the State.

SEC. 6. Each town so assessed as aforesaid shall have power to borrow money to pay its said assessment, and to repay the amount so borrowed shall have power to issue its bonds for such an amount as shall be required for such purpose, which bonds shall be signed by its selectmen and countersigned by its treasurer, and shall be of such denomination and for such time and shall bear such rate of interest as said town shall determine, which said bonds shall be free from taxation.
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SEC. 7. When said highways, so established as aforesaid, shall have become free public highways as aforesaid, the same shall thereafter be maintained by said towns so assessed in proportion to the assessment upon said towns as hereinbefore provided. The first selectmen of said several towns shall meet on the second Monday after said highways shall have become free highways as aforesaid, at the office of the selectmen in Hartford, and annually thereafter and at such other times as they shall deem necessary, and said several first selectmen shall constitute a board for the care, maintenance, and control of said highways. Said board shall appoint a chairman, secretary, and treasurer; and said board shall apportion the expense of repairing and maintaining said highways upon the said several towns in proportion to the assessment against said towns as aforesaid, and said chairman shall draw his order on the respective treasurers of said towns to the order of the treasurer of said board for the proportional amount payable by said towns as aforesaid for such repairs and maintenance. Any damages resulting from the defective condition of said highways or the bridges upon the same, shall be paid by said towns in proportion to the said assessment. For the purpose embraced in this section said board shall be a body politic and corporate by the name of The Board for the Care of Highways and Bridges Across the Connecticut River in Hartford County, and actions may be brought against said board by service upon its secretary, and any judgment recovered therein shall be paid by said towns in said proportions and in the same manner as herein provided for the payment of the expenses of repairs and maintenance as aforesaid. Said board shall annually report to said several towns the expenses incurred and paid by them during the preceding year.

SEC. 8. The services and expenses of said commissioners and the expenses incurred by the State's attorney under this act, including

such assistance as he may employ, shall be taxed by said court and paid by the State.

89 SEC. 9. All causeways and other real estate belonging to the owners of said toll bridges respectively, and which are used in connection with said bridges or for the maintenance or protection of said causeways, shall be considered under this act and the same are declared to be approaches appurtenant to and connected with said bridges, and the several toll-houses are declared to be a part of the toll-bridge with which they are connected.

Approved May 19, 1887.

STATE OF CONNECTICUT, GENERAL ASSEMBLY,
JANUARY SESSION, A. D. 1887.

(*Senate Joint Resolution No. 157.*)

(310.)

Concerning bridges across the Connecticut river at Enfield and Windsor locks.

Resolved by this assembly:

That the act entitled "An act to establish free public highways across the Connecticut river in Hartford county," passed at the present session of the General Assembly, shall not be applicable to or affect the toll-bridge owned by the Windsor Locks and Warehouse Point Bridge and Ferry Company, located at Windsor Locks, nor the toll-bridge owned by the company for erecting and supporting a toll-bridge with locks from Enfield to Suffield, commonly called the "Enfield Bridge Company," and located between the towns of Suffield and Enfield, nor shall the provisions of said act be applicable to or in any manner affect the franchise privileges or any other property belonging to either of said corporations.

Approved May 19, 1887.

Filed April 16, 1896.

GEORGE A. CONANT,
Assistant Clerk.

90 Superior Court, Hartford County, April 17, 1896.

ARTHUR F. EGGLESTON *ex Rel.*, ETC.,

vs.

S. H. WILLIAMS, Treasurer of the Town of Glastonbury. }

Respondent's Appeal.

In the above-entitled cause the respondent appeals from the judgment of said court to the supreme court of errors, to be held at Hartford, in and for the first judicial district, on the first Tuesday of May, 1896, for the revision of the errors which he claims to have occurred in the trial thereof and in the rendition of said judgment, and for reasons of said appeal he assigns the following:

1. The court erred in sustaining the demurrers filed by the relators to the respondent's return and in sustaining the respective causes of demurrers set forth in each of said demurrers.

2. The court erred in overruling the demurrers filed by respondent and in overruling the respective causes of demurrers set forth in each of said demurrers.

3. The court erred in holding upon the facts set forth in the application and in the return of the respondent as modified by the subsequent pleadings and by the finding of facts that said return was insufficient.

4. The court erred in ruling and holding that the contract of November 13, 1894, was not a valid contract between the State of Connecticut and the Berlin Iron Bridge Company, as set forth in paragraph six of respondent's return, at the time of the approval of the act of May 24, 1895.

5. The court erred in holding that the temporary bridge constructed by the Berlin Iron Bridge Company as set forth in paragraphs 7, 9, and 10 of the return, was not constructed under and by virtue of the contract of November 13, 1894.

6. The court erred in ruling and holding that "An act concerning the Hartford bridge," approved May 24, 1895, being chapter 168 of the Public Acts of 1895,—and the special act entitled
91 "Creating the Connecticut River bridge and highway district," approved June 28, 1895, and the order and requisition of the commissioners passed September 14, 1895, as set forth in paragraphs 12, 13, and 14 of the return, were not in violation of the Constitution of the United States or of the constitution of the State of Connecticut, and were valid and binding acts, and that all the doings and proceedings of said commissioners of the Connecticut River bridge and highway district being the relators in the present application, including the order and requisition made on the town of Glastonbury and on the respondent, as treasurer of said town, are valid and binding in law.

7. The court erred in ruling and holding that said public act approved May 24, 1895—and said special act, approved June 28, 1895, and the proceedings of said commission, do not deny to the respondent and to said town of Glastonbury, of which he is treasurer, and to the citizens of said town, the equal protection of the laws and especially of sections 2665, 2666, 2667, and 2768 of the General Statutes of this State, and do not deprive said town and the citizens thereof of the equal protection of the laws, and is not in violation of the Constitution of the United States nor of article 14 of the amendments thereof.

8. The court erred in ruling and holding upon the facts as they appear upon the record that said public and private acts, and the order and requisition of said commissioners for the Connecticut River bridge and highway district, passed and made on September 14, 1895, and all proceedings under the same were and are in accordance with the provisions of the Constitution of the United States, and were and are valid and binding under said Constitution.

9. The court erred in ruling and holding upon the facts as they

appear upon the record that said public and private acts and the order and requisition of said commissioners for the Connecticut River bridge and highway district passed and made on September 14, 1895, and all proceedings under the same, were and are in accordance with the provisions of the constitution of the State of Connecticut, and were and are valid and binding under said constitution.

92 10. The court erred in ruling and holding that the provisions for the issue of bonds as provided in section 4 of said special act, approved June 28, 1895, are valid and binding on this respondent and the town of Glastonbury, and the other towns named in said act, and that said town of Glastonbury and said other towns and the citizens thereof, can be compelled to pay said bonds although under said act they have no voice in issuing them.

11. The court erred in ruling and holding that it is the duty of the town of Glastonbury, and that it is obliged by law to maintain the highway across the Connecticut river and across and along the causeway and approaches thereto as set forth in said public act, approved May 24, 1895.

12. The court erred in ruling and holding that power is given in said special act to said commissioners to institute suits in their own names, and that this action is properly brought in the name of said commissioners.

13. The court erred in ruling and holding that it is not necessary that all of the five towns of Hartford, East Hartford, Glastonbury, Manchester, and South Windsor, which constitute a corporation as provided in said special act, approved June 28, 1895, should be joined as respondents in the present cause.

14. The court erred in ruling and holding that the rights of the respondent can be and are affected by transactions and agreements between the Berlin Iron Bridge Company and the State of Connecticut since the commencement of this action, and the filing of the respondent's return.

15. The court erred in ruling and holding that the board of commissioners created by the act approved June 29, 1893, for the care, maintenance, and control of the highways across the Connecticut river at Hartford, as set forth in said act, did not have the right to provide in said contract of November 13, 1894, that the bridge provided for in said contract should be of steel, and that said act of June 29, 1893, did not authorize said commissioners to build a new bridge of the character called for in said contract.

93 16. The court erred in holding that the respondent's return was insufficient in law because paragraphs 14, 15, 19, 21, and 23 do not allege particularly the reasons for the allegations that said public and private acts and that the order of said commissioners and the proceedings in question are in violation of the Constitution of the United States and of the State of Connecticut, and in holding and ruling that it does not appear in said paragraphs wherein said acts, order and proceedings deny to the respondent, The Town of Glastonbury, and to the citizens thereof, equal rights under the law, or the equal protection of the laws, or wherein said acts, order,

and proceedings take property of the respondent, or of the town of Glastonbury, or of the citizens thereof, without due process of law.

17. The court erred in ruling and holding that there is any rule of apportionment of the expense for the ordinary support and maintenance of said highway, and in overruling the claim of the respondent, that because under section 4 of said special act, the towns named therein, including the town of Glastonbury, are to pay such further sums for the ordinary support and maintenance of said highway, as said commissioners may determine as the proportion of said town; that therefore said section is void, as it states no rule or standard for the action of said commissioners in determining said proportions.

18. The court erred in not holding the special act of June 28, 1895, to be unconstitutional and void, because said act undertakes to authorize commissioners to issue the bonds of the district to an amount not exceeding five hundred thousand dollars, but provides no method of raising money by taxation in order to pay said bonds.

19. The court erred in sustaining demurrers in the reply, paragraph 17, section 3; paragraph 19, section 3; paragraph 20, section 3, and section 4, subdivision (2), because no decree of the superior court passed in 1889 has any legal effect upon the constitutionality of the act of May 24, 1895, and the act of June 28, 1895.

94 20. The court erred in sustaining the demurrer in the last assignment of error named, because the question whether the town of Glastonbury is specially benefited, or how much benefited, has in law no effect upon the question whether the two acts of 1895 above mentioned are constitutional or valid.

21. The court erred in holding the public and also the special act of 1895 aforesaid to be constitutional and valid, because the territory which is occupied by the Connecticut river is not within the legal limits of any of said five towns, but is the territory of the State of Connecticut, and the General Assembly does not possess the power under the constitution to compel towns to build bridges outside their own limits, and upon territory which belongs to the State.

22. The court erred in holding the said private act, approved June 28, 1895, to be constitutional and valid, because said act makes the town of Hartford, East Hartford, Glastonbury, Manchester, and South Windsor (being each a municipal corporation) a body politic and corporate, thereby making a corporation out of other corporations, and against the consent of any of them.

S. H. WILLIAMS,
Treasurer of the Town of Glastonbury,
By JOHN R. BUCK,
His Attorney.

I hereby certify that the foregoing appeal was filed on April 17, 1896, and that John R. Buck, of Hartford, is recognized in the sum of \$100, conditioned that the said S. H. Williams, treasurer, will

prosecute said appeal to effect and pay all costs therein if he shall fail so to do; and said appeal is hereby allowed.

GEORGE A. CONANT,
Assistant Clerk.

Filed April 17, 1896.

95 & 96

SUPERIOR COURT, HARTFORD COUNTY,
CLERK'S OFFICE.

The above and foregoing is a true copy of record in said superior court.

Attest:

C. W. JOHNSON, *Clerk.*

SUPREME COURT, HARTFORD COUNTY,
CLERK'S OFFICE.

The above and foregoing is a true copy of record in said supreme court.

Attest:

C. W. JOHNSON, *Clerk.*

97 At a supreme court of errors, holden at Hartford, in and for the first judicial district of the State of Connecticut, on the first Tuesday of May, in the year of our Lord one thousand eight hundred and ninety-six.

Present: Hon. Charles B. Andrews, chief justice; Hon. David Torrance, Hon. Simeon E. Baldwin, Hon. Augustus H. Fenn, Hon. William Hamersley, associate judges.

ARTHUR F. EGGLESTON, State's Attorney for the County of Hartford and State of Connecticut, *ex Rel.* Morgan G. Bulkeley, Meigs H. Whaples, John G. Root, John H. Hall, all of Hartford; James W. Cheney, of Manchester; Alembert O. Crosby, of Glastonbury; Charles W. Roberts, of East Hartford, and Lewis Sperry, of South Windsor, Commissioners for the Connecticut River Bridge and Highway District,

vs.

S. H. WILLIAMS, Treasurer of the Town of Glastonbury.

This application for a writ of mandamus came to the superior court in and for the county of Hartford, at the October term, 1895, to wit: on October 16, 1895, when an alternative writ of mandamus was issued by said superior court, commanding the respondent to pay the relators the sum of fifteen dollars as required by a certain order of the relators set forth in the application, and in all respects to obey said order and conform to the laws of this State with regard thereto or signify cause to the contrary.

98 The parties appeared and on November 25, 1895, the respondent made return to said superior court showing reasons why a peremptory writ of mandamus should not issue.

Said superior court having heard the parties upon the issues of law and fact as they appeared from the pleadings and agreed finding of facts on file, sustained the demurrers filed by the relators,

overruled the demurrers filed by the respondent, and found the issues for the relators, and that said return is insufficient, and that the allegations of the application are true, except as modified by the subsequent pleadings and by the finding of facts as on file.

Thereupon, said superior court adjudged *pro forma* that a peremptory writ of mandamus issue commanding the respondent forthwith on service thereof to pay the relators, the said Commissioners for the Connecticut River Bridge and Highway District, the sum of fifteen dollars, in accordance with the order and requisition of the relators made on September 14, 1895, and presented to the town of Glastonbury and to its treasurer on September 21, 1895, in the manner and form as said order directs, and that the respondent obey and conform in all respects to said order.

An appeal from said judgment to this court was filed and allowed on the 17th day of April, 1896. And now, said cause having been fully heard, this court doth adjudge that in the record transmitted to this court there is no error.

All which I have caused by these presents to be exemplified and the seal of the supreme court of errors of the State of Connecticut to be hereunto affixed, and do hereby certify that the within and foregoing is a true copy of said original files and record.

99 In testimony whereof I hereunto set my hand and affix the seal of said court, at Hartford, in said county and State, this 16th day of July, 1896.

[Seal Supreme Court of Errors, Con.]

CHARLES W. JOHNSON,

*Clerk of the Supreme Court of Errors for the First
Judicial District, County of Hartford, State of Connecticut.*

STATE OF CONNECTICUT, { ss:
Litchfield County, }

I, Charles B. Andrews, a judge of the supreme court of errors, of the State of Connecticut, do hereby certify that Charles W. Johnson, whose name is subscribed to the preceding exemplification, is the clerk of the said supreme court of errors, in and for said Hartford county, being the first judicial district of said State of Connecticut duly appointed and sworn; that the above is his genuine official signature, and that full faith and credit are due to his official act. I further certify that the seal affixed to the said exemplification is the seal of the supreme court of errors, and that the foregoing attestation is in due form.

Dated at Litchfield this 16 day of July, 1896.

CHARLES B. ANDREWS,
*A Judge of the Supreme Court of Errors
of the State of Connecticut.*

100 S. H. WILLIAMS, Treasurer, Plaintiff in Error,

vs.

ARTHUR F. EGGLESTON, State Attorney, Defendant in Error.

Assignment of Errors.

And for reasons of said writ of error to the Supreme Court of the United States, said S. H. Williams, treasurer, assigns the following:

The court erred:

1st. In holding that the contract of November 13, 1894, was not a valid contract between the State of Connecticut and the Berlin Iron Bridge Company (as set forth in paragraph 6th of respondent's return) at the time of the approval of the act of May 24th, 1895.

2nd. In holding that the temporary bridge constructed by the Berlin Iron Bridge Company, as set forth in paragraphs 7, 9, and 10 of the return was not constructed under and by virtue of the contract of November 13, 1894.

3rd. In holding that "An act concerning the Hartford bridge" approved May 24, 1895, being chapter 168 of the Public Acts of 1895, and the special act entitled "Creating the Connecticut River bridge and highway district," approved June 28, 1895, and the order and the requisition of the commissioners passed September 14, 1895, as set forth in paragraphs 12, 13 and 14 of the return, were not in violation of the Constitution of the United States nor of the 10th section of article 1 thereof or of the constitution of the State of Connecticut, and were valid and binding acts, and that all the doings and proceedings of said commissioners of the Connecticut River bridge and highway district, including the order and requisition made on the town of Glastonbury and on the respondent, as treasurer of said town, are valid and binding in law.

101 4th. In holding that said public act approved May 24,

1895, and said special act, approved June 28, 1895, and the proceedings of said commission, do not deny to the respondent and to said town of Glastonbury, of which he is treasurer, and to the citizens of said town, the equal protection of the laws and especially of sections 2665, 2666, 2667, and 2768 of the General Statutes of the State of Connecticut and also of chapter 339 of the Public Acts of the State of Connecticut approved July 9th, 1895, and do not deprive said town and the citizens thereof of the equal protection of the laws, and is not, therefore, in violation of the Constitution of the United States nor of section 1 of article 14 of the amendments thereof.

5th. In holding upon the facts as they appear upon the record, that said public and private acts, and the order and requisition of said commissioners for the Connecticut River bridge and highway district, passed and made on September 14, 1895, and all proceedings under the same were and are in accordance with the provisions of the Constitution of the United States, and of section 10 article 1 thereof, and section 1 article 14 of the amendment thereof, and were and are valid and binding under said Constitution.

6th. In holding that the act approved May 24, 1895, being Exhibit 8, in the record of said supreme court of errors, and especially the 3rd section thereof, did not impair the obligation of the contract of November 13, 1894, between the Berlin Iron Bridge Company and the State of Connecticut (Exhibit 1 annexed to defendant's return) and was not in violation of the Constitution of the United States nor of the 10th section of article 1 thereof.

7th. In holding that the whole of said act was not invalid by reason of its impairment of the obligation of said contract.

102 8th. In holding that the defendant could not make the objection to said act that it impairs the obligation of said contract.

9th. In holding that the rights of the defendant could be and were affected by transactions and agreements between the Berlin Iron Bridge Company and the State of Connecticut, entered into and made since the commencement of these proceedings and since the filing of the defendant's return, and by which the said Berlin Iron Bridge Company released its claim against said State of Connecticut on account of the contract of November 13th, 1894.

10th. In holding that said special act of June 28th, 1895, (Exhibit "B" page 73 of record of said supreme court of errors) does not deprive the town of Glastonbury nor the defendant, its treasurer, nor the citizens and inhabitants of said town, of property without due process of law, and that said act does not deny to said town, nor to the defendant as such treasurer, nor to the citizens and inhabitants of said town, the equal protection of the laws, and that said act is not in violation of the Constitution of the United States nor of section 1 of the XIVth amendment thereof.

11th. In holding that although it is the general policy of the State of Connecticut as shown by its laws enacted before and since its constitution was adopted, to leave the expense of public improvements for highway purposes to the determination of the municipal corporations within the limits of which the highways may be situated, and to charge them only with such obligations as may be incurred in their behalf by officers of their own selection, the act of May 24, 1895, (Exhibit 8 record of said supreme court of errors) and the act of June 28, 1895, (Exhibit "B" page 79 record of said supreme court of errors) are not in violation of the Constitution of the United States nor of section 1 of the XIVth amendment thereof.

103 12th. In holding that section 4 of the act approved June 28, 1895, provides any rule or standard of apportionment of the expense for the ordinary support and maintenance of said bridge or highway, except such as said commissioners may adopt, and is not in violation of the Constitution of the United States nor of section 1 of the XIVth amendment thereof.

13th. In holding that said acts of May 24, 1895, and June 28, 1895, do not violate the Constitution of the United States nor the fundamental principle of free government, that there can be no taxation without representation, although said acts provide for the taking of money by taxation from said town of Glastonbury, and

from the inhabitants thereof by said commissioners of said Connecticut River bridge and highway district, the inhabitants of said town having no voice in the appointment of said commissioners.

14th. In holding that the provisions for the issue of bonds as provided in section 4 of said special act, approved June 28, 1895, and the means provided in said special act for the collection of said bonds, constitute due process of law, and are not in violation of the Constitution of the United States nor of the 14th amendment thereof. And in holding that said act and said provisions for the issue and collection of said bonds, are valid and binding on the defendant and the town of Glastonbury, and on the citizens and tax-payers thereof and on the other towns named in said act, and that said town of Glastonbury and said other towns and the citizens thereof can be compelled to pay said bonds although under said act they have no voice in issuing them, nor in the appointment of the commissioners who are by authority of said special act, empowered to issue them, and make them binding upon said town of Glastonbury, and upon this defendant, and upon the citizens and tax-payers of said town of Glastonbury, and the citizens and tax-payers of the other towns mentioned in said act.

104 15th. In holding that the appointment of said commissioners of the Connecticut River bridge and highway district was a valid appointment.

16th. In holding that the said act approved May 24th, 1895, and the special act approved June 28th, 1895, and the proceedings of said commissioners under said acts constitute due process of law, and are not in violation of the Constitution of the United States, nor of the 14th amendment thereof, although said acts give said commissioners the right to take money from the defendant, as treasurer of the town of Glastonbury, and from the inhabitants and tax-payers of said town, for the purpose of constructing and maintaining highways and bridges outside of said town, and also give powers and privileges to said commissioners and impose duties upon them in reference to highways and bridges, and their maintenance, which powers, privileges and duties under the constitution and laws of the State of Connecticut, belong exclusively to said town of Glastonbury, and to the other towns mentioned in said act, and to the inhabitants and tax-payers thereof, (to be exercised and performed either by themselves or by officers of their own choosing,) and have exclusively belonged to said town of Glastonbury and to said other towns and to the inhabitants and tax-payers thereof, since prior to the date of the adoption of the present constitution of the State of Connecticut.

Wherefore, the said S. H. Williams, plaintiff in error, prays that the judgment of said supreme court of errors and of said superior court for Hartford county be reversed and annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of said judgments.

S. H. WILLIAMS,
Treasurer, Plaintiff in Error,
By his attorney, JOHN R. BUCK.

105

Opinion.

STATE *ex Rel.* MORGAN G. BULKELEY *et al.*, Commissioners for the
Connecticut River Bridge and Highway District,
vs.
SAMUEL H. WILLIAMS, Treasurer of the Town of Glastonbury.

(Argued May 8th; decided June 25th, 1896.)

BALDWIN, J.:

The provision of suitable means of communication between the opposite banks of the Connecticut river, has been, from early colonial days, a frequent subject of legislation by the General Assembly. Numerous ferries have been set up, from time to time, at different points, by virtue of franchises conferred in some cases upon towns, and in others upon individuals; and several toll-bridges have been erected during the present century, under charters granted to private corporations.

One of these bridges took the place of an ancient ferry between the towns of Hartford and East Hartford, in which each town had a proprietary interest. The bridge company, by a voluntary settlement, paid to Hartford a satisfactory compensation for the revocation of its ferry franchise; but declined to recognize any claim of East Hartford, the original grant to which, by its express terms, was only during the pleasure of the General Assembly, and had been repealed without qualification. Litigation resulted, and this court held that no rights of East Hartford had been violated; a decision afterwards affirmed, upon proceedings in error, by the Supreme Court of the United States. In the opinion there delivered, it was held that the State, on the one hand, and the town of East Hartford, on the other, did not stand, with reference to the grant and repeal of the ferry franchise, in the attitude of parties to a contract. "The legislature," it was declared, "was acting here on the one part, and public municipal and political corporations on the other. They were acting, too, in relation to a public object, being virtually a highway across the river, over another highway up and down the river. From this standing and relation of these

106 parties, and from the subject-matter of their action, we think that the doings of the legislature as to this ferry must be considered rather as public laws than as contracts. They related to public interests. They changed as those interests demanded. The grantees likewise, the towns being mere organizations for public purposes, were liable to have their public powers, rights, and duties modified or abolished at any moment by the legislature.

"They are incorporated for public, and not private objects. They are allowed to hold privileges or property only for public purposes. The members are not shareholders, nor joint partners in any corporate estate, which they can sell or devise to others, or which can be attached or levied on for their debts.

"Hence, generally, the doings between them and the legislature are in the nature of legislation rather than compact, and subject to all the legislative conditions just named, and therefore to be considered as not violated by subsequent legislative changes.

"It is hardly possible to conceive the grounds on which a different result could be vindicated, without destroying all legislative sovereignty, and checking most legislative improvements and amendments, as well as supervision over its subordinate public bodies.

"Thus, to go a little into details, one of the highest attributes and duties of a legislature is to regulate public matters with all public bodies, no less than the community, from time to time, in the manner which the public welfare may appear to demand.

"It can neither devolve these duties permanently on other public bodies, nor permanently suspend or abandon them itself, without being usually regarded as unfaithful, and, indeed, attempting what is wholly beyond its constitutional competency.

"It is bound, also, to continue to regulate such public matters and bodies, as much as to organize them at first. Where not restrained by some constitutional provision, this power is inherent in its nature, design, and attitude; and the community possess as deep and permanent an interest in such power remaining in and being exercised by the legislature, when the public progress and welfare demand it, as individuals or corporations can, in any instance, possess, in restraining it." *East Hartford v. Hartford Bridge Co.*, 10 How., 511, 533.

In view of these principles of constitutional law, an act was passed by the General Assembly of 1887, for the purpose of 107 making this same bridge a free public highway and throwing the burden of its support on the towns which would be especially benefitted by such a change. At that time there were three toll-bridges across the Connecticut river in Hartford county. By this act, which was entitled "An act to establish free public highways across the Connecticut river in Hartford county" (Public Acts of 1887, chap. 126, p. 746), the State's attorney was directed to bring a complaint in the name of the State to the superior court for that county, against the corporations owning these bridges, for the purpose of making each of them a free public highway. Notice of the pendency of the proceeding was to be given to all towns interested, and any town might appear and become a party. Commissioners were to be appointed by the court, who should "lay out and establish highways across the Connecticut river where the toll-bridges in said county now are, and across said bridges and across and along the causeways and approaches appurtenant to and connected therewith."

The commissioners, after such notice as the court should prescribe as to those towns which they should deem interested, were to "estimate and assess the damages caused by the lay out and establishment of such free highways, and shall estimate and assess said damages upon the several towns which they shall find will be specially benefitted by the layout and establishment of said high-

ways, as benefits accruing to said several towns, in such proportion as said commissioners shall find to be equitable." Their report, if accepted by the court, was to be "final and conclusive as to all matters therein contained, and said court shall render judgment thereon against said several towns for the amount assessed against them respectively; and the clerk of said court shall forthwith notify each of said towns of the judgment against it, by mailing to the clerk thereof a notice specifying the date and amount of such judgment."

The act also contained the following provisions:

"SEC. 5. Said towns so assessed shall, within three months from the rendition of said judgment, deposit with the treasurer of this State the sums so severally assessed against them, and at the expiration of said three months the comptroller shall draw his order on the treasurer in favor of the several persons or corporations 108 in whose favor damages have been assessed for the amount of damages so assessed respectively, and said treasurer shall hold the amount thereof for the benefit and subject to the order of the several parties in whose favor said orders were drawn, and shall notify said several parties that he so holds said amounts, and thereupon said highways so laid out as aforesaid shall become and remain public highways. In case any town shall fail to pay the judgment rendered against it as aforesaid, within the time aforesaid, said court shall order execution upon said judgment to be issued against said town in favor of the State."

Each town so assessed was given, by section 6, power to issue bonds to raise the money to pay its assessment.

"SEC. 7. When said highways, so established as aforesaid, shall have become free public highways as aforesaid, the same shall thereafter be maintained by said towns so assessed in proportion to the assessment upon said towns as hereinbefore provided. The first selectmen of said several towns shall meet on the second Monday after said highways shall have become free highways as aforesaid, at the office of the selectmen in Hartford, and annually thereafter and at such other times as they shall deem necessary, and said several first selectmen shall constitute a board for the care, maintenance, and control of said highways. Said board shall appoint a chairman, secretary, and treasurer; and said board shall apportion the expense of repairing and maintaining said highways upon the said several towns in proportion to the assessment against said towns as aforesaid, and said chairman shall draw his order on the treasurer of said board for the proportional amount payable by said towns as aforesaid for such repairs and maintenance. Any damages resulting from the defective condition of said highways or the bridges upon the same, shall be paid by said towns in proportion to the said assessment. For the purpose embraced in this section said board shall be a body politic and corporate by the name of the board for the care of highways and bridges across the Connecticut river in Hartford county, and actions may be brought against said board by service upon its secretary, and any judgment recovered therein shall be paid by said towns in said proportions.

and in the same manner as herein provided for the payment of the expenses of repairs and maintenance as aforesaid. Said board shall annually report to said several towns the expenses incurred and paid by them during the preceding year."

109 By a joint resolution, approved on the same day, it was provided that this act should not affect the bridge between Windsor Locks and Warehouse Point, nor that between Suffield and Enfield.

Due proceedings were had under the act, resulting in a final judgment in 1889, establishing a free public highway across the river between Hartford and East Hartford, including the bridge and causeway of the Hartford Bridge Company, and awarding it \$210,000, damages. The court also "found that the towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester, will be especially benefited by the layout and establishment of such free highway, and estimated and assessed said damages upon said several towns as benefits accruing to said several towns in such proportion as said commissioners found to be equitable, that is to say, as follows: To the town of Hartford ninety-five thousand (\$95,000) dollars, to the town of East Hartford sixty-six thousand (\$66,000) dollars, to the town of Glastonbury twenty-five thousand (\$25,000) dollars, to the town of South Windsor twelve thousand (\$12,000) dollars, to the town of Manchester twelve thousand (\$12,000) dollars.

Pending the action, the General Assembly in 1889 appropriated \$84,000 from the treasury of the State, for the purpose of paying forty per cent. of these damages. 10 Special Laws, p. 1321. In view of this, the judgment of the superior court concluded with an order that "the town of Glastonbury shall within three months from the date of rendition of this judgment, deposit with the treasurer of this State the sum of fifteen thousand (\$15,000) dollars, the same being sixty per cent. of the sum so assessed against it," and a like provision, with respect to the assessment against each of the other four towns, and a further order that "at the expiration of said three months from the date of the rendition of this judgment the comptroller of the State shall draw his order on the treasurer in favor of the Hartford Bridge Company for the sum of \$210,000, the same being the amount of the damages that have been so assessed in its favor, and the treasurer shall hold the amount thereof, viz: said two hundred and ten thousand (\$210,000) dollars, for the benefit and subject to the order of said Hartford Bridge Company, and shall forthwith notify said Hartford Bridge Company that he so holds said amount, and thereupon as soon as the treasurer shall give said notice said highway so laid out as aforesaid shall become and remain a public highway.

110 The treasurer of the State shall at the same time give notice to the first selectmen of each of said towns, viz: Hartford, East Hartford, Glastonbury, South Windsor, and Manchester, that said highway has become a free public highway to be thereafter maintained by said towns."

After this judgment had been fully executed, the General Assembly, in 1893, passed an act (Public Acts of 1893, chap. 239, p. 395),

declaring that the highway, which included the bridge and its approaches, should thereafter be maintained by the State at its expense, and providing for the appointment, on the nomination of the governor, of a board of three commissioners, for the care, maintenance and control of the highway, such expenses as they might incur for repairing and maintaining it to be paid from the State treasury on the order of the comptroller. All acts inconsistent therewith were repealed.

Commissioners were duly appointed under this act, who soon afterwards, the bridge having become unsafe, executed a contract in behalf of the State with the Berlin Iron Bridge Company for the erection of a new one at a cost of over \$300,000. After the company had begun the work of construction, the old bridge was accidentally destroyed by fire, and the commissioners thereupon ordered, under one of the provisions of the contract, the erection of a temporary bridge by the same company.

While it was fulfilling this order, an act was passed which was approved and took effect May 24th, 1895, (Public Acts of 1895, chap. 168, p. 530), repealing the act of 1893, and requiring the towns of Hartford, East Hartford, Glastonbury, South Windsor and Manchester thereafter to maintain the highway across the Connecticut river where the old bridge formerly was, with the proper approaches, and to erect a new bridge whenever necessary, and maintain the same, contributing to any expenses to which they might be thus subjected, "in proportion to the assessment made upon said towns by the superior court in the proceedings in which said highway was laid out and established; that is to say: Hartford, ninety-five two-hundred-and-tenths; East Hartford, sixty-six two-hundred-and-tenths; Glastonbury, twenty-five, two-hundred-and-tenths; South Windsor, twelve, two-hundred-and-tenths; Manchester, twelve two-hundred-and-tenths." Half the taxes received by the State, during the next five years, from any

111 street railway companies using the bridge, was to be paid

over to the towns in proportion to their assessments, and ten per cent. of such receipts during each succeeding year. A commission was also appointed to hear and determine all legal claims, not exceeding in all \$40,000, for contract obligations already incurred by the bridge commissioners; their decision in favor of such claimants to be final against the State, and any sums awarded by them, not exceeding \$40,000, to be paid from the State treasury. If any claimant was dissatisfied with their decision, he was at liberty to bring suit against the State in the superior court, and should the Berlin Bridge Company so sue, then whether it proved the existence of any valid contract with the bridge commissioners under the act of 1893, or not, it was to be entitled to recover for all materials furnished or expenses incurred or in connection with any contract with the commissioners, including all legal expenses. Any judgment of the court in favor of the claimant in any suit was to be paid from the State treasury. If the contract already described, between the Berlin Iron Bridge Company and the bridge commissioners, should be adjudged valid, then the comptroller

was directed to carry it out and pay the contract price; in such case the towns were not to receive half the taxes for five years, but were to receive ten per cent. of them annually, and were to remain charged with the perpetual maintenance and repair of the highway over the river, including the new bridge.

On June 28th, 1895, (Special Acts of 1895, chap. 343, p. 485), a private act was passed, entitled "An act creating the Connecticut River bridge and highway district." By this the towns of Hartford, East Hartford, Glastonbury, Manchester and South Windsor were constituted a corporation under the name of the Connecticut River bridge and highway district, "for the construction, reconstruction care, and maintenance of a free public highway across the Connecticut river at Hartford and the causeway and approaches appertaining thereto, as described in a decree of the superior court of Hartford county, passed on the tenth day of June, 1889, in which decree said highway was laid out and established." Four citizens of Hartford and one from each of the other towns were appointed "commissioners for said district, with authority to maintain said

free public highway, and whenever public safety or convenience may require, to erect new bridges along or upon said

highway, to reconstruct, raise, and widen the causeway and approaches appurtenant to or a part of said highway, at the expense of the towns named in section one of this act and composing said bridge district, at a cost not exceeding \$500,000." This board was to report annually to the several towns the expenses incurred and paid by it during the year preceding. It was authorized to issue the bonds of the district to an amount not exceeding \$500,000 to provide means for building a new bridge or improving the highway across the river. Each of the five towns, in order to meet the principal and interest due and to become due upon these bonds, was to pay over to the treasurer of the commission, on his written order, annually, twenty-five cents on each thousand dollars of its grand list, until its share of the whole had been fully satisfied, in the proportion of Hartford seventy-nine one-hundredths, East Hartford twelve one-hundredths, Glastonbury three one-hundredths, Manchester three one-hundredths, and South Windsor three one-hundredths; and for the ordinary support and maintenance of said highway each town was also directed to pay upon the orders of the commission, from time to time, such further sums as the commission might determine as its proper proportion of the total expenses under the provisions of the act, and to provide for such payments in voting its annual tax levy. Half of all taxes received by the State, during the next five years, from street railway companies using the bridge, and ten per cent. annually of all future receipts of the same character, were to be paid to the treasurer of the commission. The commissioners were given full power to construct and reconstruct all necessary bridges and approaches, and their orders were made obligatory upon the towns, and sufficient authority for the town treasurer to pay any sums to the treasurer of the commission, which the commission might direct. The courts were empowered to enforce by mandamus or otherwise, any orders of

the commissioners made under authority of the act. The commissioners under the act of 1893 were directed to turn over all property and papers in their hands to the new board. The latter was authorized to assume the cost of constructing the temporary bridge which was in course of erection under the contract made by the commissioners under the act of 1893. So much of the public act of 113 May 24th, 1895, as fixed the proportion in which each town was to contribute to the cost of constructing and maintaining the bridge and highway, was repealed.

The judgment, brought up for review by this appeal, directed the issue of a writ of peremptory mandamus, to enforce the payment by the treasurer of the town of Glastonbury of an order drawn upon him by vote of the commissioners for the Connecticut River bridge and highway district for three one-hundredths of the sum of \$500, required to meet expenses incurred by the board for the ordinary support and maintenance of the highway under their charge. In behalf of the town it is contended that it cannot thus be compelled to contribute, at the dictation of officials not of its own choosing, to the cost of maintaining a highway which is wholly outside of its territorial bounds.

It has undoubtedly been the general policy of the State to leave the expense of public improvements for highway purposes to the determination of the municipal corporations within the limits of which the highways may be situated, and to charge them only with such obligations as may be incurred in their behalf by officers of their own selection. But when the State at large or the general public have an interest in the construction or maintenance of such works, there is nothing in our Constitution, or in the principles of natural justice upon which it rests, to prevent the General Assembly from assuming the active direction of affairs by such agents as it may see fit to appoint, and apportioning whatever expenses may be incurred among such municipalities as may be found to be especially benefitted, without first stopping to ask their consent. *Norwich v. County Com'rs*, 13 Pick., 60; *Rochester v. Roberts*, 29 N. H., 360; *Philadelphia v. Field*, 55 Pa. St., 320; *Simon v. Northrup*, — Or., —; 40 Pac. Rep., 560. As against legislation of this character, American courts generally hold that no plea can be set up of a right of local self-government, implied in the nature of our institutions. *People v. Draper*, 15 N. Y., 532, 543; *People v. Flagg*, 46 N. Y., 401, 404; *Commonwealth v. Plaisted*, 148 Mass., 375; 19 Northeastern Rep., 224.

The constitution of Connecticut was ordained, as its preamble declares, by the people of Connecticut. It contemplates the existence of towns and counties, and without these the scheme of government, which it established, could not exist. It secured to these territorial subdivisions of the State certain political privileges 114 in perpetuity, and among others the election by each county of its own sheriff, and by each town of its own representatives in the General Assembly, and its own selectmen and such officers of local police as the laws might prescribe. It secured them, because it granted them; not because they previously existed. Towns have

no inherent rights. They have always been the mere creatures of the colony or the State, with such functions and such only as were conceded or recognized by law. *Webster v. Harwinton*, 32 Conn., 131. The State possesses all the powers of sovereignty, except so far as limited by the Constitution of the United States. Its executive and judicial powers are each distributed among different magistrates, elected some for counties, and some for the State at large; but its whole legislative power is vested in the General Assembly. Our constitution imposes a few, and only a few, restrictions upon its exercise, and except for these the General Assembly, in all matters pertaining to the domain of legislation, is as free and untrammeled as the people would themselves have been, had they retained the law-making power in their own hands, or as they are in adopting such constitutional amendments from time to time as they think fit. *Pratt v. Allen*, 13 Conn., 119, 125; *Booth v. Town of Woodbury*, 32 Conn., 118, 126. It has not infrequently, from early colonial days, made special provision for particular highways or bridges, and in several instances by the appointment of agencies of its own to construct or alter them at the expense of those upon whom it thought fit to cast the burden. 1 Col. Rec., 417; 5 *id.*, 80; 13 *id.*, 601; 14 *id.*, 605, 630; 1 Private Laws, 282, 285. By legislation of this nature the city of Hartford was recently compelled to contribute a large sum for a separation of grades at the Asylum Street railroad crossing, and we held the act to be not unconstitutional. *Woodruff v. Catlin*, 54 Conn., 277; *Woodruff v. N. Y. & N. E. R. R. Co.*, 59 Conn., 63, 83.

That so many laws of this general description have been enacted by the General Assembly, both before and since the adoption of our constitution, is, of itself, entitled to no small weight in determining whether they fall within the legitimate bounds of what that instrument describes as "legislative power." *Maynard v. Hill*, 125 U. S., 190, 204; *Wheeler's Appeal*, 45 Conn., 306.

One of those to which reference has been made, (I. Priv.

115 Laws, p. 285), required the town of Granby to build and maintain a bridge across the Farmington river, half of which was in the town of Windsor, and was adjudged to be valid by this court, notwithstanding then as now the general statutes provided that bridges over rivers dividing towns should be built and maintained at their joint cost. *Granby v. Thurston*, 23 Conn., 416. There is no principle of free government or rule of natural justice which demands that the support of highways and bridges shall be imposed only on those territorial subdivisions of the State in which they are situated. If it be required of them, it is only by virtue of a statute law, which the legislature can vary or repeal at pleasure. *Chidsey v. Canton*, 17 Conn., 475, 478. The burden is one that the legislature can put on such public agencies as it may deem equitable, and transfer from one to another, from time to time, as it may judge best for the public interest. *Dow v. Wakefield*, 103 Mass., 267; *Agawam v. Hampden*, 130 Mass., 528; *County of Mobile v. Kimball*, 102 U. S., 691, 703; *Washer v. Bullitt County*, 110 U. S., 558.

The defendant urges that taxation and representation are indis-

solubly connected by the underlying principles of free government, and that this, since the commission which directs the affairs of the bridge district and makes requisitions on the towns for such funds as it may deem necessary, not having been selected by them, is a sufficient defense against the payment of the order which has been drawn upon him, since it can be paid only out of the moneys raised by town taxation.

Taxes can, indeed, under our system of government, only be imposed by the free consent of those who pay them, or their representatives; and for purposes which they approve. But the inhabitants of these towns were represented in the General Assembly, by which the laws now brought in question were enacted. The legislative power, after defining the general purposes of taxation, to confer upon local public corporations the right to determine the amount of the levy within the territory under their jurisdiction, is unquestionable; and in its exercise it is immaterial whether the corporations, to which that function is entrusted, or between which it is shared, be called counties or towns, school districts or bridge districts. When

a levy is voted, the action is corporate action, deriving its obligatory force wholly from the authority of the State. Towns

116 cannot tax their inhabitants for any purpose except by virtue of statute law. That law for many years required them annually to tax for moneys to be paid over to the State treasurer for State expenditures. It now requires them to tax, as occasion may require, for moneys to be paid over to the county treasurer for county expenditures. It can equally require any town or towns to tax for moneys to be paid over to the treasurer of a bridge or highway district, in which they are included, for district expenditures. Kingman *et al.*, petitioners, 153 Mass., 566, 27 Northeastern Rep., 778.

It has been suggested that in colonial times it was the right of the inhabitants of every town, themselves, to order the municipal duties assigned to them and choose the officers by whom only it could be placed under a pecuniary obligation, and that this is one of those rights and privileges "derived from our ancestors," to "define, secure and perpetuate" which our Constitution was adopted, and to which its preamble refers. If it can be said that such a right ever existed, it was not one of the nature of those which were described by the framers of the Constitution. They were speaking of rights personal to the individual, as a citizen of a free Commonwealth; civil as distinguished from political; and belonging alike to each man, woman and child among the people of Connecticut. Such of them as they deemed most essential they proceeded to specify in the declaration of rights, and here we find asserted (art. 1, sec. 2) that "all political power is inherent in the people, and all free governments are founded on their authority" and subject to such alterations in form, from time to time, "as they may think expedient." If there were any absolute right in the inhabitants of our towns to regulate their town finances and affairs which was superior to all legislative control, it would be a great "political power." It would create an *imperium in imperio*, and invest a certain class of our people—those qualified to vote in town meetings—with the

prerogative of defeating local improvements which the General Assembly deemed it necessary to construct at the expense of those most benefitted by them, under the direction of agents of the State, unless the work were done and its cost determined under town control. No set of men can lay claim to such a privilege under the constitution of Connecticut.

The defendant further insists that the act of June 28th is
117 void, because in section 4 it requires payments from the town treasuries without providing the necessary means; the authority given to raise necessary funds in the annual tax-levy being of no avail because the bridge district is not required to submit any estimate of the amount needed for the ensuing year, before the time for laying the tax. There is no substance to this objection. So far as concerns the principal and interest of any bonds that may be issued, each town is expressly directed to pay to the district annually twenty-five cents for each thousand dollars of its grand list, until enough has been thus received to satisfy its proportionate share. As to the ordinary expenses of maintenance, the commission is to draw orders on each town from time to time for such sums as it may determine as the proportion of such town under the provisions of the act. The rule for ascertaining this proportion is that previously laid down in the same section; and it is to be presumed that the commission will make such reports to each town before its annual town meeting as will enable it to lay all taxes necessary to meet its probable expenses for the succeeding year. As to those of the first year, there is nothing on the record to indicate that the share of any town could have been large enough to cause it the slightest embarrassment.

No valid exception can be taken to this rule of apportionment, according to which the expenses of the bridge district are to be distributed among the several towns.

The acts of 1895, under which the present action has arisen, both refer to and in a sense rest upon the act of 1887. That was designed to secure the perpetual maintenance of the Hartford bridge as a free highway, at the expense of those towns to which it might be found to be of especial benefit. The duty of ascertaining which towns would be thus benefited was entrusted to the superior court. It might have been undertaken by the legislature itself, but it was entirely proper to make it the subject of proceedings of a judicial character, to be instituted by the State. *Salem Turnpike & Chelsea Bridge Corporation v. County of Essex*, 100 Mass., 282. This duty was fulfilled; and since the date of the final decree in that cause, there has been and there could be no material change in any of the conditions by which it was determined. Whatever towns were

118 most benefited in 1889 by the perpetual maintenance of a free bridge, must be most benefited by it in 1895. This was purely a question of proximity. Hartford is the natural market of all the neighboring towns lying within easy driving distance. From several of these she is separated by a navigable river, which is outside of her boundaries as well as of their. Ferries had been tried as a means of communication, and found inadequate.

A toll-bridge had been established, and with the same result. The next step naturally was to provide for a free bridge. Four towns east of the river have been judicially found to derive a special benefit from this, and while the proportionate benefit accruing to each, as well as those to Hartford, may vary from time to time, with changes in population and industrial or social conditions, some benefit, and some especial benefit, to each of the group must, in the nature of things, always be felt. On this point they were fully heard before a competent tribunal, which, after due notice to every town in the State, and long consideration, selected them out of all the rest.

Complaint is made because, while by the decree of the superior court, Glastonbury was charged with twenty-five two-hundred-and-tenths of the cost of erecting and maintaining a bridge at this point, and this proportion was reaffirmed by the General Assembly, in the act of May 24th, 1895, by that of June 28th, 1895, it was cut down to three one-hundredths, and other changes made, with the result of reducing the assessment of every town except Hartford, the burden thrown upon which was largely increased.

There is no reason why the relative amount of benefits, which each of the five towns, as compared with the rest, derives from the bridge, may not vary from one period of time to another, and any such variation might present an equitable ground for making a corresponding change in its proportionate assessment for the expenses of construction or maintenance. That what was the proper share of each was determined in 1889 by a judicial proceeding did not preclude a readjustment for due cause, in 1895, by a legislative proceeding; nor did the act of May 24th, 1895, put it out of the power of the General Assembly to reconsider its action, as was, in effect, done by the act of June 28th. *Scituate v. Weymouth*, 108 Mass., 128. We are bound to presume that there was due cause for making the apportionment finally determined on, for it is certain that there might have been. A comparison of the censuses

of the United States for 1880 and 1890, between which

119 dates the proceedings under the act of 1887 were brought

to a conclusion, shows that while, during the intervening decade, the population of Hartford, East Hartford, and Manchester had been largely increased, that of Glastonbury and South Windsor had suffered a substantial loss. The organization of modern society is such as to foster the growth of cities and their suburbs, at the expense of country towns dependent for their prosperity on agricultural pursuits. The street railways, from the taxes paid by which the treasury of the bridge district was to be in part supplied, run from Hartford to the towns across the river, and from their inhabitants a large part of the fares collected may be derived. In view of all these matters, the General Assembly may well have concluded, when by the act of June 28th they were about to supply the necessary machinery for carrying into effect the main object of the act of May 24th, that Hartford, with its rapidly increasing business and population, ought in fairness to relieve the lesser towns

in the bridge district of part of the burden to which they were subject under previous legislation.

Nor is it of any importance that in 1893 the State had taken the maintenance of the bridge upon itself. This was merely a gratuitous act, with no element of a contract, and gave rise to no vested rights, except such as might accrue from obligations on the part of the State subsequently assumed by virtue of its provisions.

It is contended that such obligation was contracted in favor of the Berlin Iron Bridge Company, and was impaired by the legislation of 1895. If so, legislation would be so far forth invalid as against that company, under art. I, sec. 10 of the Constitution of the United States. The result would be that the contract made between it and the bridge commissioners, acting under the act of 1893, would remain in force; but not that the State could not compel the towns especially benefited by its execution to pay for the benefits received. In fact, however, the pleadings show that the bridge company, availing itself of the remedy tendered by the act of May 24th, 1895, presented its claim for breach of contract to the commission appointed to examine it, and pending this action has accepted their award, and discharged the State from all demands. This, at all events, left the towns or their representatives in no position to raise this objection on constitutional grounds. In mandamus proceedings matters occurring after the suit is brought can be properly considered in determining whether the writ shall be made peremptory.

The defendant also urges that the act of June 28th violates the XIVth amendment of the Constitution of the United States, in that it deprives the town of Glastonbury of property without due process of law and denies to it the equal protection of the laws. No right, as against the State, to the equal protection of the laws is secured to its municipal corporations by this amendment, which can limit in any way legislation to charge them with public obligations. Nor have their inhabitants, in their capacity of members of such corporations, any greater right or immunities. *New Orleans v. New Orleans Water Works Co.*, 142 U. S., 79, 93. No property of the town of Glastonbury has been or is to be taken. *Booth v. Town of Woodbury*, 32 Conn., 118, 130; *Railroad Co. v. County of Otoe*, 16 Wall., 667, 676. A duty to lay taxes for public purposes has been imposed, and for reasons already stated, it was competent to the General Assembly to create that duty, as it was created. Their proceedings were due proceedings; the process by which it is now sought to compel the defendant to pay the sum in controversy is due process. The town can find no claim, under the Constitution of the United States, any more than under that of Connecticut, to such right of local self-government as precludes the General Assembly from exacting this payment, notwithstanding the demand come from another municipal corporation, the bridge district, in choosing whose members, or directing whose affairs, it has had no share. *Giozza v. Tiernan*, 148 U. S., 657, 662.

We have spoken of the bridge district as a municipal corporation, although it may not answer the common-law definition of

that term, since not composed of the inhabitants of any territory as such. In modern times corporations, both public and private, have often been constituted by a union of other corporations. Such was the United States of America after the Declaration of Independence, and until the adoption of their present Constitution. Such are the various counties of this State, once quasi-corporations and now full corporations, the constituents of which have always been the several towns within their boundaries. The power of the bridge district over the towns composing it is no less than it would have been, had their inhabitants individually been made its members. The district and the towns are alike agencies of the State for governmental purposes and, whether they be styled public or municipal corporations, their relations to it and to each other are the same, and equally subject to modification at its pleasure.

121 The defendant having refused to pay an order lawfully drawn upon him in behalf of the bridge district, the writ was properly issued against him. There was no necessity for making the several towns or the bridge district parties defendant. The bridge district was, in effect, the relator; no town other than Glastonbury had any legal interest in the controversy; and Glastonbury itself had none in this suit, by which it was charged with no wrong, and in which the only remedy sought was one to compel the performance of a statutory duty incumbent on its treasurer, as such. The writ of mandamus must run singly to the party who is bound to do the particular act commanded. *Farrell v. King*, 41 Conn., *8, 453.

While not necessary parties, the superior court might and, no doubt, would have summoned in any or all of the five towns, or the bridge district, or admitted any of them as intervenors, had application to that effect been made; for each had a vital interest in the questions of law on which the case must turn. General Statutes, sec. 884, 887, 890. No order of this nature, however, having been sought from any quarter, their absence can furnish no ground of appeal.

There is no error in the judgment appealed from.
In this opinion Torrance and Fenn, Js., concurred.

The foregoing is a true copy of the original opinion as filed with the reporter of the court; but the opinion is subject to alteration and addition by the judges until printed in the official reports.

JAS. P. ANDREWS, *Reporter.*

122 STATE OF CONNECTICUT,
First Judicial District, County of Hartford. }

In pursuance of the command of the writ of error within, I, C. W. Johnson, clerk of the supreme court of errors of the State of Connecticut, within and for the first judicial district, and county of Hartford, in said State, herewith transmit the original writ of error, and assignment of errors and a true copy of the record of all the proceedings and judgment in said supreme court of errors, and of

the opinion thereof in the case of Arthur F. Eggleston, State's attorney, *ex rel.*, Morgan G. Bulkeley, *et al.*, commissioners for the Connecticut River bridge and highway district *v.* S. H. Williams, treasurer of the town of Glastonbury, lately pending in said supreme court of errors, under my hand and the seal of said court.

Witness my official signature, and the seal of said supreme court of errors, at the city of Hartford, in the county of Hartford, and first judicial district of the State of Connecticut, this 24th day of July, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal Supreme Court of Errors, Conn.]

C. W. JOHNSON,
*Clerk of the Supreme Court of Errors of the State of
Connecticut within and for the County of
Hartford and First Judicial District.*

123 Supreme Court of the United States.
 S. H. WILLIAMS, Treasurer, Plaintiff, }
 vs. }
 ARTHUR F. EGGLESTON, Attorney for the State of Connecticut, }
 Defendant. }

Stipulation Relating to Dissenting Opinion.

In the above-entitled case it is hereby stipulated by the attorneys for the parties thereto that the dissenting opinion in said case filed in the supreme court of errors of the State of Connecticut, a certified copy of which is hereto annexed and marked Exhibit "A," may be annexed to and be filed as a part of the record of the above-entitled case in the Supreme Court of the United States as if certified to said court with the original record thereof, and that an order may be entered, if the same to the court shall seem proper, in accordance with this stipulation.

Dated at Hartford, Connecticut, this 9th day of November, 1896.

JOHN R. BUCK,
Attorney for Plaintiff in Error.
LEWIS SPERRY,
Attorney for Defendant in Error.

124

EXHIBIT "A."

STATE *ex Rel.* BULKELEY }
 vs. }
 WILLIAMS, Treasurer. }

Exhibit "A."

ANDREWS, C. J. (dissenting):

I deem it clear and certain, that the duty which the act referred to authorized the relators to perform was a town duty. Nowhere

in the act are the relators made State officers and charged with State duties. But on the contrary they are spoken of as town officers set to transact town affairs. The maintenance of the highway of which the relators have the care cannot be regarded as anything other than a town duty, without imputing to the legislature the intent to inflict on these towns the monstrous injustice of making their inhabitants liable to pay the damages caused by the non-feasance or a misfeasance of a duty not imposed on them by law. The relators are totally unlike the commissioners appointed in the case of the Asylum Street railroad crossing. In that case the State, in the exercise of its sovereign authority, appointed its own officers to abate a nuisance dangerous to human life, for the existence of which the three corporations named were jointly responsible. *Woodruff vs. Catlin*, 54 Conn., 295; *Woodruff vs. N. Y. & N. E. R. Co.*, 59 Conn., 63.

The relators although appointed to transact town affairs are—six of them—not inhabitants of Glastonbury. They were not elected by the inhabitants of that town nor has that town any control over their conduct. And from so much of the opinion as holds that the order of the relators is obligatory on that town through the town treasurer, I wholly dissent.

125 It must be admitted without dispute that it would be incompetent for the legislature to engage in the performance of the affairs of a private corporation by officers of its own appointment. The legislature chartered the New York, New Haven and Hartford Railroad Company and may alter or repeal that charter at pleasure. But the legislature cannot appoint a superintendent or a general manager of the affairs of that company without its consent, for whose acts or negligence the corporation should be liable. Such an appointment, if by any possibility the legislature should ever make one, would probably be held void as not being a legislative act. But if held valid, it could only be on the ground that as the legislature might put an entire end to the existence of that corporation, it could do the same thing by piecemeal or by indirection.

The difficulty with the appointment of these commissioners is not with the power of the legislature to establish agencies for the execution of governmental functions, nor with its power to provide for the maintenance of certain public highways through the State as distinguished from municipal agencies, and for the cost of such maintenance by taxation of the inhabitants of those localities most directly interested in such maintenance. The real difficulty is with the power of the legislature, under the provisions of the State constitution, to give the whole execution and control of duties and powers assigned to towns, to persons in whose selection the towns have no agency direct or indirect, and over whose conduct they have no control.

126 It will be a surprising doctrine to the people of this State, even if only suggested, that that the Constitution by the grant of legislative power has conferred on the legislature the authority to take from them the management of their local concerns

and the choice of their own local officers. It would be hardly more surprising to them to be told that by adopting the Constitution they had granted to their own representatives the legal authority to take away their liberties altogether.

The building and repair of highways has always been one of the principal duties of a town. In Ludlow's code of 1850, it was ordered that each town should every year choose one of its inhabitants as surveyor to take care of the highways, with power to call out the persons fit for labor, for as many days as may be necessary to keep the same in repair. Subsequently the work was provided for by town taxation and the oversight committed to the selectmen who were specially charged with mending and repairing the bridges and roads used by the stage that carried the mails. From 1643 to the present time the duty and the corresponding powers in reference to the support of highways has been recognized as essentially a corporate duty belonging to the towns, to be performed by town officers. *New Haven v. Sargent*, 38 Conn., 53; *Suffield v. Hathaway*, 44 Conn., 521; and it cannot now be maintained that such burden can be imposed on towns while all the powers necessary for

their performance are committed to persons not officers or
127 agents of the town, without holding that the inhabitants of the several towns may be held responsible to the whole extent of their property for the performance of every corporate duty, without the power of selecting or controlling the persons who are charged with the performance of such duties.

The legislature has appointed the relators and has authorized them to perform a town duty respecting a highway. If the legislature may do this, it may appoint the same or other commissioners to perform any or all other town duties. There is no argument which will sustain the former which will not sustain the latter. And if this is the law—that the legislature is this State may take to itself the entire and exclusive government of a town through officers of its own appointment—then this judgment is correct; and if the legislature may not do so, then this judgment is erroneous. Stated broadly and nakedly the question in this case can be nothing short of this: Is, or is not, town government in this State a mere privilege conceded by the legislature in its discretion, and which may be withdrawn at any time at its pleasure? While the majority of the court do not assert so extreme a view, yet the argument of the majority opinion involves the theory of the existence in the legislature of this plenary and sovereign right; and unless such right exists that argument fails.

It is true that in some decisions the courts of this State have spoken of towns as possessing no inherent, original or reserved powers. But only such powers as have been delegated to them and which may be regulated and controlled by the legislature. It is from these expressions that the claim is made
128 that towns are nothing but mere agencies which the State employs for the convenience of government, clothing them from time to time with a portion of its sovereignty, but recalling the whole or any part thereof whenever the necessity or the usefulness

of the delegation is no longer apparent. In those cases where these expressions have been used, they may not have been inappropriate. In none of them was the actual exercise by the legislature of any such power the subject of the decision. Such expressions, however, are very seldom true in anything more than a general sense. They never are and, in this State, never can be literally accepted in practice. There are also cases the conclusion in which is not consistent with the existence in the legislature of the power claimed, and one in which the conclusion is antagonistic. *Farrell v. Derby*, 58 Conn., 234; *Taylor v. Danbury Public Hall*, 35 Conn., 430; *Burlington v. Schwarzman*, 52 Conn., 181.

The people of this State when they formed the present constitution, found the whole of its territory occupied by those municipal corporations called towns, each embracing all the inhabitants of a certain portion of the territory. These corporations were governed by their own inhabitants in town meetings, and their affairs were managed by officers chosen by themselves and who were always inhabitants of the town. And they provided in that instrument that

the rights and duties of all corporations should remain as if

129 the constitution had not been adopted except so far as therein restricted or limited. Art. 10, sec. 3. They also provided, art. 6, that electors should only be admitted from the inhabitants of a town by the selectmen and town clerk. And by art. 3 and 4, that meetings by the electors for the choice of State officers should be held in the several towns and carried on by town officers. And by art. 3, that the house of representatives should consist of representatives from each town, being electors and residents in that town; and that town representation should be substantially equal, and that no town should be abolished or deprived of its representation without its own consent. And by art. 10, sec. 2, that each town should annually elect selectmen and such other officers of local police as the laws may prescribe.

The relation of the towns in this State to the State government is different from that in other States. Prior to the adoption of the constitution, the State government consisted mainly of an assembly of delegates from the towns; and those towns had been uniformly treated as entitled to local self-government. While it could not be said that an act of that assembly vesting the functions of a town meeting or the duties of selectmen in a commission appointed by the assembly would be unconstitutional—strictly there was in those days no constitution—yet every one familiar with our history knows that such an act would have been regarded as revolutionary and that its passage was practically impossible.

130 This right of the inhabitants of a town to themselves order the municipal duties assigned to the town was plainly one of those "rights and privileges derived from our ancestors," which the constitution was adopted "in order more effectually to define, secure and perpetuate." By the several articles of the constitution above mentioned, that instrument intended to make sufficient provisions to that end. It did guarantee the perpetual existence of the several towns with selectmen to manage their local affairs, and

a town clerk to record their doings at town meetings; although it left the variety and duties of the officers of the local police subject to legislative change.

In studying these parts of the constitution we should always keep in mind that the terms used had a settled meaning before it was adopted. So far as it relates to the form of administration, the constitution is, in the main, no more than a recognition and re-enactment of an accepted system. The rights preserved are ancient rights, and the municipal bodies recognized in it and required to be perpetuated were already existing with known elements and functions. And when the constitution guarantees the perpetual continuance of towns, it means towns with the same essential characteristics which towns at that time exercised; for if these essential characteristics do not remain, the town as known to the constitution does not remain. It is the town as it then actually existed with which the constitution deals.

Let us then ascertain what a town was as then existing.

131 In that way only can we give to these provisions of the constitution respecting towns, their full and true effect. The form of words by which a town corporation was created, sufficiently appears in a single instance. In the year 1779, Southington was incorporated; and the record, abbreviated, is that "upon the memorial of the inhabitants of the society of Southington, by their agents showing that * * * and praying to be incorporated into a distinct town it was:—Resolved by the assembly that the memorialists (*i. e.* the inhabitants of the territory named) with all the lands lying within the following limits and bounds * * * be and the same are hereby incorporated into a distinct and separate town with all the powers and privileges that other towns by law have and do enjoy." 2 State Records, 429. For all the general purposes of municipal administration the State was divided only into towns. And what the town was as an actual living entity is shown by the statutes then in force. Statutes of 1801, titles, towns; town meetings; town clerk; selectmen and highways. The towns are substantially the only territorial subdivisions used. Counties, as a municipal corporation or agency, did not exist. They were the mere territorial limits within which the jurisdiction of the county courts was exercised, and they were named and designated in connection with the establishment of such courts. 2 Col. Records, 35. And the courts administered the construction as well as the management of the jails and court-houses as well as the other

132 matters pertaining to the maintenance of such courts. Statutes, 1808, title gaols. Counties had no powers except such as were exercised by the courts, and no officers except those appointed by the courts, and a sheriff appointed by the General Assembly. Towns are the only subdivision mentioned in the Constitution, save that the General Assembly is required to appoint a sheriff in each county who shall serve for three years.

These statutes and rules respecting towns were a necessary result from the origin, formation, and history of the peculiar form of

government in this State. In stating this history, in order to have it as connected as possible, some slight repetition will be made.

In 1633 and 1634 a strong dissent developed in some prevailing notions of government in the infant colony of Massachusetts Bay. The opposition was strongest in the towns of Dorchester, Newtown, and Watertown. In 1631 Watertown had protested against paying a tax assessed by the board of assistants, on the ground that they could not be taxed save by their own consent. All these towns were foremost in insisting on a general government based on town representation. From these three towns, induced largely by dissatisfaction with the ecclesiastical and centralizing views of the dominant party in the bay, the pioneers of Connecticut came. By 1636 three towns or plantations were established in Connecticut and were called Dorchester, Newtown, and Watertown, but shortly after called Windsor, Hartford, and Wethersfield.

133 In March of that year the general court of Massachusetts named eight persons "to govern the people at Connecticut for the space of a year." At the end of that year the three towns on their own behalf appointed committees and magistrates who as a general court directed the affairs common to the three towns and so until Jan. 14th, 1638, 1639. At this time the essential features of town government became fixed, and have never since been changed; they were, a town meeting composed of all the inhabitants exercising all power, an executive board for the general management of town affairs—and a constable for the service of the town warrants and the conduct of the necessary physical force—all chosen by the town meeting.

The "fundamental orders" or constitution of 1639 was a combination and confederation entered into by the inhabitants and residents of Windsor, Hartford, and Wethersfield, "to associate and conjoin ourselves to be as one public State or Commonwealth" and to be "guided and governed in our civil affairs" according to such laws as shall be made in the manner provided. The orders provided that each year there should be held two general courts, composed of deputies from each town chosen by "all that are admitted inhabitants in the towns." To said general courts was committed the supreme power of the Commonwealth *i. e.* they only shall have power: (1) To make and repeal laws; (2) to grant levies for the Commonwealth; (3) to admit freemen (only those already admitted inhabitants by the towns); (4) to dispose of lands undisposed

134 of (not belonging to some particular town); (5) to discipline either towns or magistrates or any other person for any misdemeanor, and "may deal in any other matter that concerns the good of the Commonwealth."

This power, exclusive and permissive, given to the general court, developed the unlimited extent which afterwards characterized it—not so much from this (the tenth order) as from the eighth order which provided that Windsor, Hartford, and Wethersfield, should have power each town to send four of their freemen as their deputies to every general court, "which deputies should have the power of the whole town to give their votes and allowance to all such

laws and orders as may be for the public good and unto which the said towns are to be bound." The power which any one of said general courts might exercise was unlimited, but the power was that of the several towns exercised by its deputies for the purpose of binding the towns by all laws and orders made for the public good. For this purpose the inhabitants of the towns as self-governing bodies did "associate and conjoin themselves to be as one public State or Commonwealth," and did "for ourselves and our successors (*i. e.* inhabitants of each town) and such as shall be adjoined to us at any time hereafter (*i. e.* towns hereafter admitted) enter into combination and confederation together." And as a further means by which each town may protect itself against unequal treatment by the confederacy the final order prohibits the levy of any tax on the towns unless the 135 amount of the whole tax to be paid by each town is apportioned by a committee consisting of an equal number of each town. Five years later Farmington was admitted and the order provided, "they also—the inhabitants—are to have the like liberties as the other towns upon the river for making orders among themselves." 1 Col. Records, 134. About the same time Southampton on Long island was admitted. Owing to its separation by the Sound from the jurisdiction of Connecticut, and the greater difficulties of participating in the doings of the general court as well as the doubt whether its inhabitants were included among those subject to the power of the original towns, a formal combination was negotiated by which the town of Southampton as the then river towns had already done, did "by their said deputies for themselves and their successors associate and join themselves to the jurisdiction of Connecticut." 1 Col. Records, 566. In 1662 fortified by the charter of Charles II in their claim of jurisdiction, the general court admitted by simple vote the town of Southold, L. I., and the following year ordered that "Southold should have and enjoy the same privileges as Southampton doth by virtue of their combination." 1 Col. Records, 386-406.

The fundamental orders consummated the union of independent and self-governing bodies for the purpose of their own better government and of extending their jurisdiction. The combination provided for an exercise of power limited only by the fact 136 that the governing body could last only six months and must consist of deputies from each town clothed with the whole power of the town; but by the very terms of the combination each town must continue a self-governed body; and from that time on the power of local self-government was recognized as necessarily involved in the existence as well of the original towns who had associated and conjoined themselves to be as one State as of those described as such towns "as shall be adjoined to us at any time hereafter." The fundamental orders were adopted January 14th, 1638, 1639. The first general court was held in May, 1639. The second in September. There was an adjourned meeting of this court held in October. And in this the existing self-governing power of the towns was recognized. "The towns of Hartford, Windsor, and

Wethersfield, or any other of the towns within this jurisdiction shall each of them have power to dispose of their own lands undisposed of * * * as also to choose their own officers and make such orders as may be for the well ordering of their own towns being not repugnant to any law here established." 1 Col. Records, 36. That this declaration was not regarded as a law necessary to give towns power not before possessed, is certain, because if it were so such law would have been passed at the first court held in the preceding May, and which held several sessions, or the illegal acts previously passed by the towns would have been validated; because a law necessary to enable a town to exercise any power must have been approved—in Ludlow's Code adopted in 1650; and be-
137 cause if a law were necessary to enable towns to dispose of their own property, it was equally necessary to have such a law to authorize them to establish and define the duties of their principal officers. Now the office and duty of townsmen (not known as selectmen until 1691 or later) had been established in the several towns with power defined by a town vote prior to the adoption of the fundamental orders; Hartford town records, January 1st, 1638, 1639; and these votes remained unchanged except by town meetings for many years afterwards. In fact the towns, after as well as before the "constitution" of 1639, conducted by town meeting their own affairs and chose their own officers and continued so to do until the constitution of 1818. The only interruption being an edict of Sir Edmund Andros during his brief usurpation, which strictly defined the duties of selectmen and prohibited any town meeting except the necessary annual one for their choice. 3 Col. Records, 429.

In 1818 the "town" was a territorial and municipal corporation exercising the rights of local self-government through a town meeting and officers of its own choosing; it had existed with these rights from a time prior to the combination of the first towns under a joint jurisdiction. It had been continuously the main instrument by which all the operations of government were set in motion and carried on; and when the provisions of the constitution speak of "towns" they speak of that kind of a municipal corporation whose character, rights and privileges had been thus defined and settled for nearly two centuries.

138 After a struggle of more than thirty years the General Assembly yielded to the popular demand that the people have an opportunity to frame a constitution for their own government; that is, embody in one fundamental plan "their supreme, original, will in respect to the organization and perpetuation of a State government; the division and distribution of its powers; the officers by whom those powers are to be exercised and the limitations necessary to restrain the actions of each and all for the preservation of the rights, liberties and privileges of all * * * to which the legislature as well as every other branch of the Government and every officer in the performance of his duties must conform." *Opinion of the Judges*, 30 Conn., 593. For this purpose, in May, 1818, a resolution was passed recommending to the people to assemble in

their respective towns at their usual place of holding town meetings and having chosen their presiding officer, to elect as many delegates as said town now choose representatives, to meet in convention in the following August, and when so convened, if by them deemed expedient to "proceed to the formation of a constitution of civil government for the people of this State." A copy of which constitution when so formed to be transmitted by said convention forthwith to each town clerk to be by him submitted to the voters in his town assembled at such time as said convention may designate for their approbation and ratification. Said constitution "when ratified and approved by such majority of said qualified voters convened as aforesaid as shall be directed by said convention shall be and remain the 139 supreme law of the State." Journal Const. Conn., p. 6. The committee which framed this resolution, in their report, say that "from resolutions adopted in many towns and petitions of citizens in others" they can entertain no doubt of a general manifestation of a desire for "the establishment of a constitutional compact" and that the political happiness heretofore enjoyed "is to be ascribed to other causes rather than to any particular intrinsic excellence in the form and character of the government itself. Destitute of fundamental laws defining and limiting the powers of the legislature, the citizen has no security against encroachments on his most sacred rights and violations of the first principles of a free government, except what may be found in the dependence of that body on the frequency of popular elections. Yet even these boasted barriers against arbitrary power may at any time be prostrated by the legislative will." J. H. Trumbull's Notes on Const. of Conn., 43.

Upon the ratification by a majority of the people of the State, of the constitution formed by the delegates from each town appointed for that purpose in town meetings, the former government by General Assembly was finally and forever dissolved. The people in the exercise of their sovereignty established a new government in their separate and independent departments whose powers were to be exercised—and exercised only in accordance with their "supreme, original will, embodied in the constitution." As declared in its

140 preamble the main object in establishing this constitution by the people was "in order more effectually to define, secure and perpetuate the liberties, rights and privileges which they have derived from their ancestors." This purpose was accomplished, first by the declaration of certain principles of free government which were made a fundamental condition on which all powers to each department of government were granted; and second, by incorporating into the framework of the government established, such provisions as were deemed apt and necessary to preserve the most essential of their ancient privileges. Among these the one cherished above all others was the right and privilege of local self-government as represented in the towns, the town meeting and the town officers. The town was the germ from which all government in Connecticut has developed; and under the constitution, as the court has recently said, "the annual town election is the single entrance to our whole

system of State government." *O'Flaherty v. Bridgeport*, 64 Conn., 165. Through all its history it had played the most conspicuous part; with all the arbitrary power from time to time exercised by the general court the ordering of town affairs through its own officers had never been disturbed. The suppression of the town meeting was associated with tyrran-y under the usurpation of Andros, and its maintenance was by common consent deemed both the source and protection of that sturdy independence and respect for law which has ever characterized our people. It was to be expected that when the delegates from the towns met in convention to form a constitution that should perpetuate their ancient rights and
141 privileges, a local self-government would not fail to be secured, and so we find this principle embodied in the whole framework of the new government.

When art. 8 provided that electors should only be admitted from the inhabitants of a town and by the selectmen and town clerk of the several towns, the perpetual existence of the several towns with an executive board to manage their affairs and a town clerk to record the doings at town meetings is guaranteed. The same is true when art. 3 prohibits any meeting of the electors for the choice of State officers except in the towns and when carried on only by town officers; and the same article in providing that the house of representatives should consist of representatives from each town being electors residing in that town, and that town representation shall be substantially equal and that no town should be abolished or deprived of its representation without its consent, not only established a legislative department where the people as corporators of town corporations are represented in the lower branch and as individuals in the upper branch—but guaranteed the right and privilege in the inhabitants of each town to remain so long as they will a town corporation.

The legislature may regulate the conduct of the town corporation, may determine the local duties to be assigned to them and in that sense the towns derive their powers from the legislature—but the possession of some local duties and powers the administration of such duties by themselves or their own officers is inherent in the towns which the constitution makes the basis of the new government and the legislature has no power to destroy this town.

142 The constitution assumes the existence of towns as local municipalities and contemplates that they shall continue as they have hitherto been. It does not expressly provide that every portion of the State shall have a town organization. It names certain officers who are to be chosen by the inhabitants of the towns and confers on the inhabitants the right to choose these officers, but it does not define their duties, not in preclude the legislature from establishing new officers and giving the incumbents the general management of the municipal affairs. If therefore there are no restraints imposed upon the legislative discretion beyond those specifically stated the towns of this State might be abolished and their people subjected to the rule of commissioners appointed at the State capitol. The people of these towns might be kept in a sort of

pupilage for any period of time or to any extent the legislature might choose. And it assumes either an intention that the legislative control should be constant and absolute, or on the other hand that there are certain fundamental principles in our general framework of government which were within the contemplation of the people when they agreed upon the constitution, subject to which the delegation of authority to the several departments of government was made. That this last is the case appears too plain for serious controversy. The implied restriction upon the power of the legislature as regards local governments, though their limits may

not be as plainly defined as express provisions might have
143 made them are nevertheless equally imperative in character and whenever a question arises that is clearly within them there is no alternative but to bow to their authority.

Article tenth, in providing that each town shall annually elect selectmen and such officers of local police as the laws may prescribe, guarantees the management of town affairs by town officers of their own choice. By directing the selectmen—the more modern name for the ancient townsmen—to whom had been committed the important affairs of the town since the first settlement of the river towns—to be elected by each town annually, the direction that all officers and agents of the town shall derive their appointment from the town, is affirmed by an implication so absolute as not to be escaped—otherwise every officer and agent of the town except selectmen and the local police prescribed by law may be appointed by the legislature. The town clerk is certainly not a selectman; if he is an officer of local police he is not such an one “as the laws may prescribe;” his title comes directly from the constitution, yet no one would have the hardihood to claim that the next legislature may appoint every town clerk for a term of twenty years. The selectmen must be elected by the towns annually because they are the ordinary and permanent agents of the town and unless this provision means that all these agents must derive their authority from the town then the legislature may direct that the town duties

appertaining to selectmen as well as every function of a town
144 shall be performed by special town agents to be appointed by the legislature. I do not understand the majority of this court to justify such legislation; plainly it would be void, but it would be void only because the constitution in placing a town beyond the power of the legislature to destroy, takes under its protection the right—without which the towns of the constitution cease to be a municipal corporation and become something unknown to our laws—of self-government through its own officers and agents in all those matters included by law within its municipal powers and duties.

This right of local self-government is assured by the provisions of articles third, sixth, and tenth of the constitution; it enters into the whole framework of the government; because of its existence the continuance of the body of electors, the election of State officers, the constitution of the house of representatives were made dependent on the towns and subject to the specific provisions mentioned.

A guaranty so bulwarked should be more potent than any naked restriction. When the bill of rights forbids the taking of private property for public use without compensation it forbids the taking of such property for any but a public use, and the guarantee implied is not less sacred than the guarantee expressed.

When therefore the legislature having included within the municipal duties of Glastonbury and the four other towns named the maintenance of the highway described, it could not appoint the agents who on behalf of the town were to exercise those duties and powers.

145 "The theory of the constitution is that the several towns are of right entitled to choose whom they will have to rule over them; and that this right cannot be taken away from them and the electors and inhabitants disfranchised by any act of the legislature, or of any or all of the departments of the State government combined." *The People ex rel. Bolton v. Albutron*, 55 N. Y., 56. "Local self-government having always been a part of the American and English systems, we shall look for its recognition in any such instrument. And even if not expressly recognized it is still to be understood that all these instruments are framed with its present existence and anticipated continuance in view." Cooley, *Const. Lim.* (6 ed.), 47; *People v. Hurlbut*, 24 Mich., 44; *Park Com'rs v. Detroit*, 28 Mich., 228; *The People ex rel. McCagg v. Chicago*, 51 Ill., 17. "The right of local self-government cannot be taken away because all our constitutions assume its continuance as an undoubted right of the people and as an incident to Republican government." Cooley, *Const. Lim.* (6th ed.), 207. In the examination of American constitutional law we shall not fail to notice the care taken and the means adopted to bring the agencies by which power is to be exercised as near as possible to the subject upon which the power is to operate. In contradistinction to the governments where power is concentrated in one man, or one or more bodies of men whose supervision and active control extends to all the objects of government within the territorial limits of the State, the American system

146 is one of complete *decentralization*, the primary and vital idea of which is, that local affairs shall be managed by local authorities and general affairs only by the central authority." Cooley, *Const. Lim.* (6th ed.), 223; *Ordrouaux Const. Legislation*, 62.

This opinion has been drawn out further than was intended. The question of local self-government as an ingredient essential to constitutional administration has been set forth in the language of Judge Cooley in *The People v. Hurlbut*, 24 Mich., 44, already cited, a case in which the legislature had undertaken to appoint commissioners to govern the city of Detroit, that I quote the paragraph in full. After reviewing the history of local and municipal government in various States he said: "In view of these historical facts, and of these general principles, the question recurs whether one State constitution can be so construed as to confer upon the legislature the power to appoint for the municipalities the officers who are to manage the property, interests and rights in which their own people alone are concerned. If it can be, it involves these con-

sequences : As there is no provision requiring the legislative interference to be upon any general system, it can and may be partial and purely arbitrary. As there is nothing requiring the persons appointed to be citizens of the locality, they can and may be sent in from abroad, and it is not a remote possibility self-government of towns may make way for a government by such influences as can force themselves upon the legislative notice. As the municipal corporation will have no control,

except such as the State may voluntarily give it, as regards
147 the taxes to be levied, the buildings to be constructed, the pavements to be laid, the conveniences to be supplied, it is inevitable that parties from mere personal considerations shall seek the offices and endeavor to secure from the appointing body, whose members in general are not to feel the burden, a compensation such as would not be awarded by the people who must bear it, though the chief tie binding them to the interests of the people governed might be the salaries paid on the one side and drawn on the other. As the legislature could not be compelled to regard the local political sentiments in their choice, and would in fact be most likely to interfere where that sentiment was adverse to their own, the Government to towns might be taken to itself by the party for the time being in power, and municipal governments might easily and naturally become the spoils of party, as State and national offices unfortunately are now. All these things are not only possible, but entirely within the range of probability, if the positions assumed on behalf of the relators are tenable. It may be said that there would be more abuses of power, such as may creep in under any system of constitutional freedom. But what is constitutional freedom ? Has the administration of equal laws by magistrates fairly chosen no necessary place in it ? Constitutional freedom certainly does not consist in exemption from governmental interference in the citizen's private affairs ; in his being unmolested in his family,

suffered to buy, sell and enjoy property and generally to seek
148 happiness in his own way, as this might be permitted by the most arbitrary ruler even though he allowed his subjects no degree of political liberty. The government of an oligarchy may be as just, as regardful of private rights and as little burdensome as any other ; but if it were sought to establish such a government over our towns by law it would hardly do to call upon a protesting people to show where in the constitution the power to establish was prohibited ; it would be necessary on the other hand to point out to these where and by what ung-arded words the power had been conferred. Some things are too plain to be written. If this charter of State government which we call a constitution were all there was of constitutional command ; if the usages, the customs, the maxims, that have sprung from the habits of life, modes of thought, methods of trying facts by the neighborhood, and mutual responsibility in neighborhood interests, the precepts which have come from the revolutions which overturned tyrran-ies, the sentiments of manly independence and self-control which impelled our ancestors to summon the local community to redress local evils in-

stead of relying upon king or legislature at a distance to do so—if a recognition of all these were to be stricken from the body of our constitutional law a lifeless skeleton might remain, but the living spirit, that which gives it force and attraction, which makes it valuable and draws to it the affections of the people, that which

149 distinguishes it from the numberless constitutions so called which in Europe have been set up and thrown down within

the last hundred years, many of which in their expressions have seemed equally fair and to possess equal promise with ours and have only been wanting in the support and vitality which these alone can give—this living and breathing spirit which supplies the interpretation of the words of the written charter, would be utterly lost and gone.

Mr. Justice Story has well shown that constitutional freedom means something more than liberty permitted; it consists in the civil and political rights which are absolutely guaranteed, assured and guarded; in one's liberties as a man and a citizen, his right to vote, his right to hold office, his right to worship God according to the dictates of his own conscience, his equality with all others who are his fellow-citizens; all these guarded and protected and not held at the mercy and discretion of any one man or of any popular majority. Story, *Miscellaneous Writings*, 620. If these are not now the absolute right of the people of this State they may be allowed more liberty of action and more privileges, but they are little nearer to constitutional freedom than Europe was when an imperial city sent out consuls to govern it. The men who framed our institutions have not so understood the facts. With them it has been an axiom that our system was one of checks and balances; that each department of government was a check upon the other, and each grade

150 of government upon the rest; and they have never questioned or doubted that the corporation in each municipality were

exercising their franchises under the protection of certain fundamental principles which no power in the State could override or disregard. The State may mould local institutions according to its views of policy or expediency; but local government is matter of absolute right; and the State cannot take it away. It would be the boldest mockery to speak of a city as possessing municipal liberty where the State not only shaped its government, but at discretion sent its own agents to administer it; or to call that system one of constitutional freedom under which it should be equally admissible to allow the people full control of their local affairs, or no control at all."

In this State we are not obliged to invoke the underlying principle of American constitutional law, in order to protect the inhabitants of our towns in their right to local self-government; the express provisions and necessary implications of our own Constitution plainly guarantee that right. Therefore the private act by which the legislature undertook to appoint these relators to execute the powers and perform the duties committed by the public act to the town of Glastonbury and the four other towns, as town corpora-

tions, violates a clear mandate of the Constitution, and to that extent is void.

I think there is error in the judgment of the superior court.

HAMERSLEY, J. (dissenting):

I dissent from the decision of a majority of my colleagues, and cannot but believe that a different conclusion would have 151 been reached, had it seemed to them as clear as it seems to me, that the legislation in question necessarily involves the appointment of the relators by the legislature, not as State officers but as town officers, not to perform duties directly in behalf of the State, but duties by the very terms of the statute assigned to the towns as the local municipal duties of a town corporation.

I dissent from the opinion as announced by Judge Baldwin, and concur in the opinion of Chief Justice Andrews.

The foregoing is a true copy of the original opinion as filed with the reporter of the court.

JAMES P. ANDREWS, *Reporter.*

152 STATE OF CONNECTICUT,
First Judicial District, County of Hartford. }

In pursuance of the command of the writ of error in the case of Arthur F. Eggleston, State's attorney, *ex rel.* Morgan G. Bulkeley *et al.*, commissioners for the Connecticut River bridge and highway district, *vs.* S. H. Williams, treasurer of the town of Glastonbury, I, C. W. Johnson, clerk of the supreme court of errors of the State of Connecticut, within and for the first judicial district and county of Hartford, in said State, herewith transmit a true copy of the dissenting opinion filed in said case, lately pending in said supreme court of errors, under my hand and the seal of said court, said dissenting opinion being hereunto attached, with the stipulation in reference thereto.

Witness my official signature and the seal of said supreme court of errors, at the city of Hartford, in the county of Hartford and first judicial district of the State of Connecticut, this ninth day of November, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal Supreme Court of Errors, Conn.]

C. W. JOHNSON,
*Clerk of the Supreme Court of Errors of the State of
Connecticut within and for the County of
Hartford and First Judicial District.*

153 [Endorsed:] Case No. 16,349. Supreme Court U. S., October term, 1896. Term No., 570. S. H. Williams, treasurer,

&c., P. E., vs. Arthur F. Eggleston, attorney, &c. Stipulation of counsel & addition to record.

[Stamped:] Office Supreme Court U. S. Filed Nov. 10, 1896.
James H. McKenney, clerk.

Endorsed on cover: Case No. 16,349. Connecticut supreme court of errors. Term No., 570. S. H. Williams, treasurer of the town of Glastonbury, Hartford county, Connecticut, plaintiff in error, vs. Arthur F. Eggleston, attorney for the State of Connecticut. Filed July 30, 1896.